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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	10-CV-4496 (NGG) (RER)
STATES OF ARIZONA,	:	
CONNECTICUT, IDAHO, ILLINOIS,	:	
IOWA, MARYLAND, MICHIGAN,	:	
MISSOURI, MONTANA, NEBRASKA,	:	United States Courthouse
NEW HAMPSHIRE, OHIO, RHODE	:	Brooklyn, New York
ISLAND, TENNESSEE, TEXAS,	:	
UTAH, AND VERMONT,	:	
	:	Monday, August 4, 2014
Plaintiffs,	:	9:00 a.m.

-against-

AMERICAN EXPRESS COMPANY, ET	:
AL.,	:
	:
Defendants.	:

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REDACTED TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL  
BEFORE THE HONORABLE NICHOLAS G. GARAUFI  
UNITED STATES DISTRICT JUDGE

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1 COURTROOM DEPUTY: Case on trial. Please, Counsel,  
2 state your appearances, please.

3 MR. CONRATH: Good morning, Your Honor. Craig  
4 Conrath for the United States.

5 THE COURT: Good morning.

6 MR. FULKERSON: Good morning, Your Honor. Bret  
7 Fulkerson for the State of Texas.

8 THE COURT: Oh, you're new. You're from Texas?

9 MR. FULKERSON: Yes, Your Honor.

10 THE COURT: From Austin?

11 MR. FULKERSON: Yes.

12 THE COURT: Welcome.

13 MR. FULKERSON: Thank you.

14 MR. CHESLER: Good morning, Your Honor. Evan  
15 Chesler for American Express.

16 MR. FLEXNER: Good morning, Your Honor. Donald  
17 Flexner for American Express.

18 THE COURT: Good morning. I have a law clerk  
19 starting in January from UT Austin. So we reach out to the  
20 middle sometimes.

21 Well, welcome, everybody. I've been getting your  
22 correspondence, and I appreciate it. I think what we ought to  
23 do, just briefly, is talk about our plans for the week and  
24 also this issue about these 200 documents.

25 I have two applications to seal the courtroom.

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1 Perhaps we can discuss that first.

2 Mr. Orsini?

3 MR. ORSINI: Good morning, Your Honor. Kevin Orsini  
4 for American Express.

5 Those are letters that I believe Mr. Gold sent in.  
6 He's not in court this morning. But they both touch upon the  
7 same issue. The one witness is a woman named Pam Codispoti  
8 from American Express. She is going to testify entirely, or  
9 almost entirely, about some co-brand negotiations and co-brand  
10 relationships. And the other witness is an individual from  
11 Delta who was managing the Delta side of the co-brand  
12 relationship with American Express.

13 As Your Honor will recall, the co-brands were an  
14 item of particular sensitivity during the confidentiality  
15 motions. The government had stipulated even in the first  
16 instance with us and the third parties to keep that type of  
17 information confidential. And since the examinations will  
18 cover entirely those issues, hence the application to seal.

19 THE COURT: Okay. And how long do you all expect to  
20 have Ms. Codispoti on the witness stand?

21 MR. ORSINI: So the most recent estimate that  
22 Mr. Gold gave me this morning was about an hour and a half to  
23 two hours --

24 THE COURT: Okay.

25 MR. ORSINI: -- at the longest.

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1 THE COURT: Okay. Who's going to be cross-examining  
2 that witness?

3 MR. CONRATH: Mr. Read will be cross-examining that  
4 witness, Your Honor. But I would guess a similar amount of  
5 time. I don't know exactly. But these are -- these -- we  
6 agree that the market for co-brand agreements is very  
7 competitive, and we have no objection to sealing on those  
8 grounds.

9 THE COURT: Which brings us to the Delta witness.

10 MR. ORSINI: And Mr. Miller, I suspect it's going to  
11 be roughly the same period of time. Mr. Gold is also putting  
12 the Delta witness on and he's estimated to me about an hour  
13 and a half. That one might be a little shorter. Since  
14 they're covering some overlapping issues, one might be trimmed  
15 back based upon the other.

16 THE COURT: Well, could we do it all on Wednesday,  
17 then?

18 MR. ORSINI: That's the plan, Your Honor. We have  
19 Ms. Codispoti listed for tomorrow in case -- we have Professor  
20 Gilbert coming in tomorrow as our economist, which I suspect  
21 we'll start first thing tomorrow morning. He may take most of  
22 the day. We have listed Ms. Codispoti in case there's a  
23 little time left in the afternoon, but our intention is to  
24 have the bulk of the testimony for those two witnesses on  
25 Wednesday.

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1 MR. CONRATH: We also for the same reasons have no  
2 objection to sealing for Delta.

3 THE COURT: Then, that's what we'll do. I'll try to  
4 focus that on Wednesday and seal the courtroom for the  
5 testimony for good cause shown. All right? It's approved.

6 MR. ORSINI: Thank you, Your Honor.

7 THE COURT: Okay. And then -- and who are the  
8 witnesses for today?

9 MR. ORSINI: Today, Your Honor, the first witness is  
10 William Glenn, who is currently not an American Express  
11 employee. He's running the business travel joint venture that  
12 was created a few weeks ago, but had been an American Express  
13 employee for a little over a decade and was the head of the  
14 merchant business. On the organizational chart that Your  
15 Honor has, his name isn't there, but he essentially was in the  
16 same role that Anne Williams currently fills.

17 THE COURT: So he was president of Global Merchant  
18 Services?

19 MR. ORSINI: That is correct, Your Honor.

20 THE COURT: And Mr. Bright reported to him?

21 MR. ORSINI: Mr. Bright at that time -- Mr. Bright  
22 will correct me. I think at that time Mr. Bright was working  
23 in the corporate card portion of the business. Do I have that  
24 wrong?

25 MR. BRIGHT: You have that wrong.

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1 MR. ORSINI: I have that wrong.

2 MR. BRIGHT: I was working for Josh Silverman at the  
3 time, just a few months ago.

4 THE COURT: Josh Silverman, yes. We've met  
5 Mr. Silverman.

6 MR. ORSINI: On the consumer side of the business.

7 THE COURT: Okay. Well...

8 MR. ORSINI: Then the second witness, Your Honor, is  
9 John Hayes, who is the American Express chief marketing  
10 officer. He's up towards the top of the org chart.

11 THE COURT: And he reports to Mr. Chenault?

12 MR. ORSINI: That is correct, Your Honor.

13 THE COURT: Well, thank you very much. All right.  
14 And that should take the day today, you think?

15 MR. ORSINI: I expect so, Your Honor. I expect my  
16 examination of Mr. Glenn will be in the range of two to two  
17 and a half hours, and then Mr. Hayes roughly the same this  
18 afternoon.

19 THE COURT: Okay. Thank you. Well, that gives us  
20 at least an idea of what's going to be happening here this  
21 week, which brings us to the question of the 200 exhibits.  
22 Did you see the letter from Mr. Chesler?

23 MR. CONRATH: Your Honor, that arrived quite late  
24 last night, and I was not in the office, I have to confess.

25 THE COURT: Say that? You were not where?

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1 MR. CONRATH: In the office.

2 THE COURT: When?

3 MR. CONRATH: Late last night.

4 THE COURT: You were not?

5 MR. CONRATH: No. Shocking. Very disturbing. Can  
6 I suggest that we just put this over for another day, Your  
7 Honor -- this has lingered for a while -- and let us see if  
8 there's a response we have to the letter and be prepared to  
9 talk about it?

10 THE COURT: Right. Because I've been -- what I've  
11 done is I've blocked out Labor Day weekend so that you can  
12 bring witnesses in to authenticate these documents. And I'm  
13 in New York on Labor Day weekend, so I assume everybody is in  
14 town. And, therefore, you all will be here with me if it  
15 becomes necessary to do so.

16 MR. CONRATH: Very well, Your Honor.

17 THE COURT: So, having said that, perhaps there's  
18 some solution to the problem --

19 MR. CONRATH: We'll work it out.

20 THE COURT: -- which will help us work it out, short  
21 of extra days during a holiday weekend.

22 MR. CONRATH: Very well. Thank you, Your Honor.

23 THE COURT: But also --

24 MR. CONRATH: We do love New York.

25 THE COURT: I'll allow you to reopen your case to



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1 bring in fact witnesses so that I have the -- I understand the  
2 context of all these documents if it becomes absolutely  
3 necessary. And that would also be on Labor Day weekend.

4 MR. CONRATH: Very well. Thank you, Your Honor.

5 THE COURT: Okay? There you go. So let's get  
6 started.

7 MR. ORSINI: Your Honor, American Express calls  
8 William Glenn.

9 (Witness sworn.)

10 COURTROOM DEPUTY: Please have a seat.

11 THE WITNESS: Thank you.

12 COURTROOM DEPUTY: Please state and spell your full  
13 name for the record.

14 THE WITNESS: William H. Glenn.

15 COURTROOM DEPUTY: Spell your last name.

16 THE WITNESS: G-l-e-n-n.

17 THE COURT: You may inquire.

18 MR. ORSINI: If I may approach, Your Honor, with the  
19 witness book?

20 THE COURT: You may.

21 MR. ORSINI: Your Honor, my team is ahead of both of  
22 us this morning. They've asked if we could switch the feed  
23 over.

24 THE COURT: Sure.

25 W I L L I A M G L E N N,

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1 called by the Defense, having been first duly sworn,  
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ORSINI:

5 Q Good morning, Mr. Glenn.

6 A Good morning.

7 Q Mr. Glenn, by whom are you currently employed?

8 A American Express Global Business Travel.

9 Q And can you give us a brief description of your position  
10 at American Express Global Business Travel and what American  
11 Express Global Business Travel is?

12 A I'm the president/CEO. And the American Express Global  
13 Business Travel is new -- is a new JV effective --

14 THE COURT: JV? You have to speak in -- acronyms  
15 don't work, at least at the beginning of your testimony.  
16 Later on, the sky is the limit.

17 THE WITNESS: Sorry, Your Honor.

18 THE COURT: JV? That's junior varsity?

19 THE WITNESS: Joint venture.

20 THE COURT: Go on.

21 A It's a joint venture between American Express and a group  
22 of investors.

23 Q And what is the business of this joint venture?

24 A Corporate business travel.

25 Q Roughly, how many employees are there worldwide in this

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1 joint venture?

2 A Roughly, 14,000.

3 Q The global business travel business that this joint  
4 venture engaged in, was that previously a business unit of  
5 American Express?

6 A Yes, it was.

7 Q Until it was spun off recently?

8 A Correct.

9 Q And what is American Express's role in the management of  
10 the joint venture as it exists today?

11 A American Express has a 50 percent stake in the business.  
12 And there's no real management. They have four board seats.

13 Q And just generally, what is the nature of the Global  
14 Business Travel Services that this joint venture provides?

15 A So we provide travel services to corporations for their  
16 employees to travel.

17 Q Okay. Now, prior to becoming president and CEO of the  
18 Global Business Travel joint venture, by whom were you  
19 employed?

20 A American Express.

21 Q And for how long were you employed at American Express?

22 A Almost 12 years.

23 Q Okay. We'll come back to your time at American Express  
24 in a minute, but I want to go back in time first. Let's start  
25 with your educational experience. Where did you get your

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1 degrees?

2 A Lehigh University.

3 Q Undergraduate?

4 A It was undergraduate and then an MBA.

5 Q Okay. And after you graduated from Lehigh with the MBA,  
6 what was your first job?

7 A I was a sales rep for Proctor & Gamble.

8 Q Okay. And what were you selling?

9 A Crest toothpaste, Norwich aspirin, Pepto Bismol, Scope.

10 Q And then -- we don't need to go in every step, but,  
11 roughly, through the time you came to American Express, what  
12 were your various jobs?

13 A I was -- the last job I had at Proctor & Gamble was a  
14 district sales manager. And then I went to work for Pepsi.

15 Q And what did you do with Pepsi?

16 A I had a couple of roles. I was a -- I was in sales, and  
17 then I was in marketing, and then bottling operations in  
18 New Jersey, and then eventually I ran the food service  
19 division.

20 Q What was the food service division?

21 A Selling soda to fast-food restaurants or restaurants and  
22 vending machines.

23 Q Okay. Now, you joined American Express in, roughly,  
24 2002; is that right?

25 A September of 2002.

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1 Q And what was your first position when you joined American  
2 Express?

3 A I ran the -- it was then Establishment Services, the  
4 merchant business for the U.S. and Canada.

5 Q And how long did you have that responsibility?

6 A Roughly, three years. Roughly, three or -- three to four  
7 years.

8 Q To whom did you report?

9 A At that time, I reported to Dave House.

10 Q And what was Dave House's position?

11 A He was the -- I think he was the group president for  
12 Traveler's Checks, Global Network Services, and Global  
13 Merchant Services.

14 Q And to whom did Mr. House report?

15 A Ken Chenault.

16 Q And what was your next position at American Express?

17 A Following that, I was still running the U.S. and Canadian  
18 Establishment Services Business and also took responsibility  
19 for pricing and operations and marketing globally for the  
20 Merchant Business Establishment Services.

21 Q Do you recall, roughly, when that was?

22 A Sometime during 2005.

23 Q When you took on those additional responsibilities you  
24 just described, did you also have Global Merchant Services  
25 responsibilities?

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1 A Well, I had -- I had Merchant Services responsibilities  
2 for pricing, operations and marketing and the day-to-day  
3 client management and sales responsibilities for just U.S. and  
4 Canada.

5 Q Okay. So during that time period, others had day-to-day  
6 responsibilities for the management of merchant relationships  
7 outside of the United States and Canada?

8 A Correct.

9 Q And when did you come to have responsibility for that  
10 day-to-day management on a global basis for the American  
11 Express accepting merchants?

12 A I think sometime in 2007.

13 Q And how long did you hold that position?

14 A Until late 2000 -- December, I think, of 2011.

15 Q When you were in that position, to whom did you report?

16 A Ed Gilligan.

17 Q And what was Ed Gilligan's position during that time?

18 A Group president and then I think vice-chairman.

19 Q Mr. Gilligan was reporting to Mr. Chenault during that  
20 time period?

21 A Yes.

22 Q We're going to come back to your time in Global Merchant  
23 Services, and it's going to be the focus of testimony today,  
24 but I just want to close out the loop with respect to your  
25 time at American Express. When you left Global Merchant

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1 Services, what was your next position?

2 A I was given responsibility for global business travel and  
3 global commercial payments, so corporate payments business.

4 Q So corporate cards?

5 A Corporate cards, yes.

6 Q The JV that's been created, the joint venture that's been  
7 created, that only took the business travel piece; correct?

8 The corporate card piece is still managed within American  
9 Express?

10 A Yes, it is.

11 Q So when we go back to the time when you were in Global  
12 Merchant Services, what were your general responsibilities?

13 A Well, throughout, it was first the U.S. and Canada, and  
14 then globally to acquire more merchants and retain those  
15 merchants that we've acquired, to provide marketing and --  
16 marketing support for them, operational support for them.

17 Q And how large was the organization, at least in the  
18 United States? You don't have to give precise numbers, but  
19 general numbers.

20 A A couple of -- well, in the U.S.?

21 Q In the United States, yes.

22 A A couple of thousand people.

23 Q And what were the various roles that those people in the  
24 organization fulfilled? Just categories.

25 A Sure. So we have sales -- a proprietary sales

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1 organization that were employees of American Express. A  
2 proprietary client management organization, again, employed by  
3 American Express, and the client management organization was  
4 to call on our customers, our merchants.

5 We had a network development organization that  
6 serviced those customers and made sure that the transactions  
7 went back and forth, a marketing organization that was  
8 responsible for leading the marketing programs that we ran  
9 with merchants.

10 Q You used the term "proprietary sales force." Is there a  
11 distinction between the sales force that was proprietary sales  
12 force and other sales forces that were working on behalf of  
13 American Express?

14 A Yes. So the -- again, the proprietary sales force was an  
15 organization fully employed by American Express to go out  
16 and -- in both client management and sales to acquire new --  
17 more -- new merchants. We also had a third party -- third  
18 parties that worked on behalf to acquire smaller merchants,  
19 but they were acquiring them for us. We owned the contract,  
20 set the pricing, but they were a third-party organization.  
21 And we had folks who managed that -- those third-party  
22 organizations.

23 Q And were there merchant size breaks that would determine  
24 whether a merchant was the focus of the proprietary sales  
25 force versus the external sales force?



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1 A Yes. So -- I don't remember the exact dollar -- dollar  
2 number of what the potential was, but smaller merchants were  
3 acquired by these third parties for us.

4 Q The Court heard testimony earlier in this trial from Tom  
5 Pojero. Tom Pojero was in your group during the time you were  
6 running merchant services?

7 A Yes, he was.

8 Q Okay. And the Court also heard testimony from Shane  
9 Berry and from Joseph Quagliata. Were they also in your group  
10 at the time that you were running merchant services?

11 A At different points in time, yes.

12 Q Now, you mentioned pricing as one of the areas of  
13 responsibility that you had. When you had responsibilities  
14 related to pricing, what generally were those  
15 responsibilities?

16 A Well, it was responsibility for the strategy, for doing  
17 the analytics, to set the tables that we have for various  
18 industries and size of customers within those industries, and  
19 to make some decisions about how we went to market with the  
20 pricing.

21 Q And the pricing we're talking about right now, that's the  
22 merchant pricing?

23 A Yes.

24 Q What other organizations within Global Merchant Services  
25 had a role with respect to pricing policy?

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1 A We had a pricing team that reported directly to me.

2 Q Were there others who were involved in the pricing  
3 aspect?

4 A Well, the -- in terms of pricing decisions or --

5 Q In terms of pricing decisions or pricing policy, either  
6 generally related to tables or specific merchant negotiations.

7 A The pricing tables in terms of -- pricing tables were set  
8 by the -- by the pricing organization reporting to me. But in  
9 terms of the ultimate decision, what actions we took, we had  
10 the marketing team involved, the client management team  
11 involved, the acquisition teams involved -- actually, the  
12 servicing teams as well, because we wanted to make sure that  
13 questions or comments or feedback from the merchants, we had  
14 all channels covered.

15 Q When you say servicing teams, what do you mean by that?

16 A Folks who would answer the phones when the merchants  
17 called in about operational issues or just general issues.

18 THE COURT: Could you go over -- I assume you  
19 will -- what types of pricing components we're talking about  
20 here, you know, discount rate and anything else having to do  
21 with pricing? In other words, what's the whole scope of the  
22 pricing picture?

23 MR. ORSINI: Absolutely, Your Honor. That's exactly  
24 where I was going.

25 THE COURT: Sorry about that.

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1 MR. ORSINI: And if I wasn't, that's exactly where  
2 I'm going.

3 Q So we talked about the merchant discount rate tables.

4 A Yes.

5 Q That's one component of merchant pricing; correct?

6 A Yes.

7 Q And how were those -- strike that.

8 The discount rate tables differ by a variety of  
9 different characteristics of the merchant; is that correct?

10 A Yes, they do.

11 Q And what types of characteristics drive what table they  
12 fit on and where in the table they fit?

13 A The -- so as it relates to discount rate and --

14 Q Let's stick with discount rate for now.

15 A The tables are set principally by industry, by size of  
16 merchant within those industries.

17 Q So as a merchant grows in size, what impact does that  
18 have upon the discount rate that they pay for American  
19 Express?

20 A The tables reduce -- I mean, the discount rate reduces as  
21 they meet different thresholds for volume.

22 Q Okay. And as a general matter, why does American Express  
23 use discount rate tables?

24 A I wasn't there when they were established, but it is part  
25 of our business model. And I think principally we talk about

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1 pricing integrity, that -- and transparency. And so the  
2 tables allow us the way to communicate how we price, which is  
3 on the value we provide, the cost that we incur, and what the  
4 competitive environment is.

5 Q Okay. You mentioned pricing integrity. Why was that  
6 something that American Express was focused on?

7 A We believe we -- you know, we communicate and price on  
8 those three elements, price, cost and competition -- I mean,  
9 value of cost and competition, and that it's really important  
10 for us to go to market and talk to merchants about that this  
11 table exists for the industry so that we have what we call  
12 pricing integrity.

13 Q I'll come back in a few minutes to the tables themselves,  
14 but I want to get all the other components out there, if  
15 that's okay, first.

16 You're familiar with the term "net discount rate" or  
17 "net effective rate"; correct?

18 A I am.

19 Q And what does that term mean or what did it mean to you  
20 during your time being responsible for merchant pricing?

21 A Well, there's a headline rate that's the table rate. And  
22 then there are dollars that we spend with merchants, signing  
23 bonuses, promotions, marketing, distribution programs for  
24 card. So there are various programs that go in. Co-brand  
25 relationships have more moneys not just from the merchant

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1 business that I just described, but also from the issuing  
2 businesses as well.

3 So the net discount rate or effective discount rate  
4 is the -- I guess the net sum of the headline rate, less a lot  
5 of the moneys that we spend with the merchants.

6 Q So I want to walk through each of those. Let's start  
7 with signing bonuses. What were signing bonuses used for  
8 during the time that you were responsible for pricing and  
9 merchant relationships?

10 A Signing bonuses are used to acquire new merchants or when  
11 we're negotiating new terms of a merchant, either the contract  
12 came up or the merchant wanted to renegotiate. So we've used  
13 signing bonuses to essentially sign or re-sign a merchant.

14 Q And what impact does providing a signing bonus to a  
15 merchant have on the net discount rate we were just talking  
16 about?

17 A It lowers it.

18 Q So if American Express was willing in a particular  
19 instance to give a signing bonus to a merchant to either start  
20 a relationship or renew a relationship and the effect of that  
21 was to lower the discount rate, why not just lower the  
22 discount rate?

23 A Because of what we described earlier, which is the  
24 pricing table and the integrity. So signing bonuses were in  
25 exchange for a longer-term contract or gave us certainty and

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1 the merchant certainty in terms of the length of the contract  
2 and the agreements that we had -- the contractual agreements  
3 that we had.

4 Q Can you give us a general sense of what the  
5 decision-making process was around whether to give a signing  
6 bonus, how big the signing bonus would be? Not any specifics,  
7 just the general way it worked in the business.

8 A So there were general thresholds. So Tom Pojero and his  
9 folks, to a certain level, had the authority to provide  
10 signing bonuses to merchants; Shane Berry or Joe Quagliata or  
11 other folks on the client management side to renew. Again, so  
12 there were thresholds of approval.

13 Q You talked about some marketing funds as playing into the  
14 net effective rate. Can you explain what those marketing  
15 funds were and how those affected the effective rate?

16 A Sure. We -- so we -- we would give dollars to merchants  
17 to engage in marketing programs with us. Also, the value of  
18 those marketing programs were sometimes quantified against the  
19 headline rate.

20 Q And were there -- were you familiar with something called  
21 a business building bonus or a strategic investment fund,  
22 otherwise known as --

23 A Yes.

24 Q Okay. And what were those?

25 A I don't remember the difference between the two. But,

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1 essentially, they were types of incentives to encourage  
2 merchants, or when merchants grew, they would get another form  
3 of a discount.

4 Q And those are sometimes referred to in documents as BBBs  
5 for the business building bonus or SIF for the Strategic  
6 Investment Fund?

7 A Strategic, yes.

8 Q A similar question I asked you with respect to the  
9 signing bonuses. If the effect of providing these marketing  
10 funds was to lower the effective rate, why provide it through  
11 marketing funds as opposed to just lowering the rate?

12 A Again, it was -- it had to do with pricing integrity and  
13 also agreement from the merchants to work on marketing with  
14 us, right, which is they want to attract new customers. We'd  
15 like to encourage spend of our cardmembers. And so it was in  
16 exchange for participating in marketing programs.

17 Q So what value do these marketing funds bring to American  
18 Express?

19 A Well, hopefully, just like rewards on the -- on the cards  
20 themselves that the issuing business provides; right? This  
21 would be programs that are attractive to our cardmembers and  
22 attractive to the merchants to encourage more spend.

23 Q And how would these marketing programs benefit the  
24 merchants?

25 A Driving more spend from our cardmembers, building loyalty

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1 among our cardmember base to that particular merchant.

2 Q Another piece you mentioned of the net effective rate, I  
3 believe, were card distribution programs; is that right?

4 A Yes.

5 Q And what are card distribution programs?

6 A Well, there were a variety of them. But, essentially, we  
7 would provide funds to merchants to acquire cardmembers for  
8 us. So they would, in their stores or tabling or some other  
9 vehicle, use their distribution channels to acquire new  
10 cardmembers for American Express.

11 Q How would they do that? Would they put up signs? Would  
12 they have take ones?

13 A Take ones is -- when I first joined the company, existed.  
14 Then we did more things, like tabling at Costco. So there  
15 were actual tables there where they would put up signs and ask  
16 people if they wanted to, you know, sign up for an American  
17 Express card.

18 Q When you say "tabling," can you just describe more what  
19 that means?

20 A Literally, it's a table --

21 Q Okay.

22 A -- in the stores; right? And so there are various means  
23 of acquisition from merchants to acquire cards for us.

24 Q How would the merchants be compensated for participating  
25 in these card distribution programs?



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1 A I don't know all the elements of it. But, essentially,  
2 it worked on a bounty per card acquired, so a payment to the  
3 merchant for every card they acquired for American Express.

4 Q What types of cards did American Express run these  
5 acquisition programs with? Was it just credit cards?

6 A Gift cards. There were credit cards, gift cards. I  
7 think that's -- prepaid -- I guess prepaid cards.

8 Q You also mentioned co-brand partnerships having an impact  
9 on the net effective rate. Can you explain what you meant by  
10 that?

11 A Sure. A co-brand partner is a merchant, like Delta, we  
12 have a relationship with. And those cards are co-branded  
13 American Express and Delta, or one of the other co-brand  
14 partners. And so there are moneys -- moneys given to that  
15 merchant to support a co-brand relationship. And it's not  
16 just the moneys given directly. There are revenues associated  
17 with spend on that particular card.

18 Q And what role did the co-brand relationships play in the  
19 negotiations that American Express would have with the  
20 partners on the Card Acceptance Agreements?

21 A Well, the relationship starts with the Card Acceptance  
22 Agreement, right, which is driven by the merchant -- by the  
23 merchant business; right? When we enter into a co-brand  
24 relationship or a co-brand opportunity, both parties would --  
25 you know, across American Express, the different divisions

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1 would come together and present proposals to those particular  
2 merchants.

3 Q Why would different divisions be involved in presenting  
4 those proposals?

5 A Because there was -- you know, all the businesses were  
6 creating and delivering more value to the merchant. So it was  
7 important for us to show the merchant the different  
8 businesses, what value they were -- we were delivering to that  
9 particular merchant. And then also all the dollars,  
10 essentially, rounded out to an effective lower discount rate.

11 Q Before we come back to the discount rates, I'd just like  
12 you to take a look in your binder, if you could -- it's a  
13 binder I've handed you -- at the document marked Plaintiff's  
14 Exhibit 0881.

15 MR. ORSINI: Your Honor, this document is safe for  
16 public consumption.

17 Q The first page of this is an e-mail from you to  
18 Ms. Doriann Medina regarding network principles re: airline  
19 co-brands. Who was Ms. Medina?

20 A She was my assistant.

21 Q Okay. So this is an e-mail that you would have sent to  
22 your assistant?

23 A Yes.

24 Q You were asking her to save it. Did she maintain files  
25 for you?

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1 A She did.

2 MR. ORSINI: Your Honor, I offer PX 0881 into  
3 evidence.

4 MR. HAMER: No objection.

5 THE COURT: All right. PX 0881 is received in  
6 evidence.

7 (Plaintiff Exhibit 0881 received in evidence.)

8 Q Take a look at the next page. Sorry, the next page. Why  
9 not try this? The page ending in 881. Thank you. It's the  
10 slide. It ends in 881.

11 What was the purpose of this document?

12 A This was an internal document from the pricing team  
13 talking about the principles about how we would think about  
14 the economics before going to the financials, the economics,  
15 the proposal before going to the merchant.

16 Q And why was there a conversation internally about this?

17 A You know, essentially, the merchant services business got  
18 16 percent or so of the discount rate and the issuing  
19 businesses received 84 percent. And so we wanted to make sure  
20 that the issuing business understood what our role was in  
21 terms of the financials and the offer. So it differed than  
22 the associations, Visa/MasterCard, our roles differed than the  
23 associations and the issuing businesses.

24 So it was an internal -- you know, an internal  
25 principle set up to have the right kinds of discussions before

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1 we went to the merchant.

2 Q And how does this relate to what you were talking about a  
3 few minutes ago about the notion that the co-brand benefits  
4 impacted the net discount rate?

5 A Well, essentially, this was -- it was set up to say what  
6 merchant services would deliver to the co-brand relationship  
7 in terms of funding what the issuing business would determine.  
8 And all those dollars essentially rolled up to affect the  
9 discount rate.

10 Q And if you could take a look in your binder at PX 0999.

11 MR. ORSINI: Your Honor, this document is already in  
12 evidence. I believe it was entered into evidence during  
13 Mr. Funda's testimony.

14 Q And if you could look at the page ending 1041, Mr. Glenn.  
15 Was this document created for a similar purpose that you were  
16 just describing?

17 A Yes.

18 Q So you can put these documents aside.

19 I want to go back to the considerations that you  
20 said American Express had in mind or you had in mind when you  
21 were making decisions about pricing and particular discount  
22 rates. I believe you mentioned three factors: Value, cost  
23 and competition; is that right?

24 A Yes.

25 Q Let's start with value. What elements of value were part

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1 of your considerations as you were making decisions about  
2 merchant pricing?

3 A It -- value started with what cardmembers spend related  
4 to -- or the relation of cardmember spend to the financial  
5 benefit of the merchant. So it was all the merchant lens, how  
6 are we going to create more value to them, how our card  
7 supported more value for them, as well as some of the other  
8 programs that we could run with merchants, the marketing  
9 programs, Business Insights, some of the programs that the  
10 issuing business would run with the merchants, as well.

11 Q Okay. And we're going to come back and attack that a  
12 little bit in a few minutes.

13 The second prong was cost.

14 A Yes.

15 Q How did cost play a role in the pricing decisions that  
16 you were making?

17 A Well, we're incurring costs all the time to power up our  
18 value proposition, to put more resources against the  
19 merchants, that -- our value proposition from merchant  
20 services to the merchant, as well as the cost of the issuing  
21 businesses would spend against the value proposition for our  
22 cardmembers that helps the spend and a particular merchant.  
23 All those relate to the value.

24 Q And as you were making pricing decisions, how did these  
25 costs factor into those decisions?

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1 A Well, I know our costs were rising; right? So our costs  
2 were rising and we were putting more value into the  
3 proposition. And so, you know, ultimately, it's to try to  
4 align the value we were providing to the merchant with the  
5 price we were charging.

6 Q And the third prong you mentioned was competition. What  
7 was the role of competition in the pricing decisions that you  
8 were making?

9 A Well, all these are commercial decisions, right, from the  
10 merchants. They're making a decision whether to accept us or  
11 not accept us. And so it's really important that we  
12 understand where the competition is in terms of their price  
13 and the difference between our price and the competitive  
14 price. And merchants would look at that, and they'd have to  
15 evaluate is the cost of American Express, you know, is the  
16 value based on the cost the right number, and they'd compare  
17 us against the competition.

18 Q And what role did that comparison that was being made by  
19 the merchants play in your mind as you were making decisions  
20 about what particular pricing strategies to take?

21 A You know, that was the ultimate decision about whether we  
22 were going to be successful or not in front of the merchant in  
23 these negotiations. And it wasn't just a contract time. It  
24 was -- merchants, like any other businesses, want a lower  
25 rate. They want to pay less; right?

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1 And so our responsibility was to talk about the  
2 value we created. And in all those discussions internally, it  
3 was really important that I understood where the competition  
4 was, because they would make that comparison as well.

5 Q Now, you mentioned earlier that there was a pricing team  
6 that reported up to you when you were in charge of the pricing  
7 decisions; correct?

8 A Yes.

9 Q And who was running that pricing team at the time?

10 A Steve McCurdy.

11 Q And was Mr. Funda on that pricing team as well?

12 A Eventually. Jack worked -- Jack Funda worked for Steve  
13 McCurdy.

14 Q And what was the role of the pricing team in helping you  
15 make your decisions about pricing?

16 A You know, essentially, it was to look at the landscape,  
17 look at the competition, do as much analytics as we could on  
18 the competition, look at the industry, evaluate the value that  
19 we were creating, looking at all options that we had in terms  
20 of different pricing scenarios for merchants, for acquisition,  
21 and for retention of those merchants.

22 Q And what role did the pricing team play in the  
23 negotiations with merchants?

24 A They didn't play a role in negotiating directly with  
25 merchants.

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1 Q Now --

2 THE COURT: When you said look at the competition,  
3 you mean the merchants' competition; is that it?

4 THE WITNESS: No, Your Honor. I was talking about  
5 Visa and MasterCard pricing to the merchant.

6 THE COURT: I see. And how did the rate charged to  
7 other merchants in the same area of business, like airlines or  
8 big box stores or whatever, how did that figure into your  
9 computation, if it did? In other words, you know what you're  
10 charging -- you know what you're charging Costco. And so now  
11 you're going to -- you're now negotiating with BJ's --

12 THE WITNESS: Right.

13 THE COURT: -- or with Wal-Mart and whatever, Sam's  
14 Club. So how did that all figure into the pricing negotiating  
15 strategy?

16 THE WITNESS: As I indicated earlier, we have rate  
17 tables by industry, and so we're very conscious of spillover  
18 spend, meaning that -- spillover pricing, meaning that it's  
19 really important for us across these different industries to  
20 have rate table integrity with different levels of volume in  
21 it.

22 And then they are negotiations. They're customized  
23 negotiations. So when I talked earlier about marketing funds  
24 and signing bonuses, the difference in net effective rate  
25 would essentially be the agreement between the merchant and



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1 ourselves to work on marketing programs or a longer term  
2 agreement or a co-brand relationship. So Costco is very  
3 different than BJ's because we have a unique relationship. So  
4 we brought all that into the rate negotiations.

5 THE COURT: And so did you also find that some of  
6 the components, potential components of the agreement would be  
7 of greater value to one merchant in the same class of  
8 merchants as opposed to another? For instance, a marketing  
9 bonus might be of great value to Best Buy but not of such  
10 great value to P.C. Richard, if you will.

11 THE WITNESS: That's correct. Right. And those  
12 were all laid out in these negotiations that we had. And it  
13 wasn't just a contractual time either; right? There would be  
14 marketing -- some merchants would not market with us for a  
15 year or a year and a half. And, you know, we have a client  
16 management organization that's trying to drive more business  
17 and value to that particular merchant. They call on these  
18 merchants all the time.

19 So you could be in the middle of a contract and a  
20 merchant decides to run a marketing program with us and --  
21 that didn't want to do it a year before.

22 THE COURT: And they could go back and you could  
23 negotiate that?

24 THE WITNESS: Yes.

25 THE COURT: Thank you.

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1 Q I want to stay on that for a second, because I don't  
2 think that's something that's come up much during the trial.

3 There are marketing funds that were part of the  
4 negotiations of a contract itself; correct?

5 A Correct. Yes.

6 Q And then I think we were just describing to the Court a  
7 circumstance where, let's say, you have a five-year contract.  
8 In the middle of the contract, someone, either Amex or the  
9 merchant, decides to have another conversation about doing  
10 some marketing with American Express for that merchant; right?

11 A Yes.

12 Q Can you describe generally how that would work? I know  
13 you weren't involved in every conversation. But, generally,  
14 how does that work and what are the different ways in which  
15 the funding for that marketing program can come about?

16 A So because we have a client management organization,  
17 right, that calls on the merchants all the time, we also have  
18 a centralized -- or had -- I think we still do -- a  
19 centralized marketing team that's solely responsible for  
20 marketing with merchants. And so there's a whole organization  
21 there that works on these programs.

22 And so the client manager's responsibility, continue  
23 to add value and talk about our value to merchants on a daily  
24 basis. And marketing is a big part of the benefit and the  
25 value we think we deliver to merchants.

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1           So it would either be a marketing program that is  
2   fully funded by us or co-funded by the merchant. You know, it  
3   varies across the board. But there -- it happens all the time  
4   where we're trying to sell a merchant on the value of  
5   marketing at terms of the contract. They feel like they don't  
6   need this value. And then, you know, as we talk about our  
7   business and the value and our cardmembers and what we can do  
8   and the various things we can do, they decide to market with  
9   us.

10           Similarly, on Business Insights, which is a group  
11   that we started up that delivers analytics to merchants and  
12   supports a lot of the marketing programs as well, some  
13   merchants weren't interested in it. My objective was to make  
14   sure that we're working really, really hard to drive value to  
15   merchants, and that's what the responsibilities of the client  
16   management organization is and the marketing team and the  
17   Business Insights team are, to continue to show value so we  
18   continue to have acceptance.

19   Q     When you say that marketing programs sometimes could be  
20   funded by American Express, what in particular was being  
21   funded? I'm not talking about a specific campaign. But what  
22   type of costs related to a marketing program was American  
23   Express funding?

24   A     Creative development, the modeling for the merchant in  
25   terms of what their objectives were. You know, all businesses

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1 want to have -- create or acquire new customers. So merchants  
2 want to acquire new customers. They also want to retain those  
3 customers after they acquire them.

4 So some of the work that we did was lapsed customers  
5 who had shopped at a particular merchant but stopped shopping  
6 for 12 months, and we knew who those folks were. And  
7 customers want to retain their -- you know, acquire new  
8 customers and also retain them.

9 So all that work was driven by -- sort of the costs  
10 were borne by us, typically.

11 Q Were there instances where -- let's stick with the  
12 business analytics. Were there instances where American  
13 Express would charge the merchant for business analytic?

14 A Yes, we started to do that as well. So some of it was  
15 part of the value proposition and is embedded in the discount  
16 rate and the cost -- and the value. We incurred the cost.  
17 There were other analytics that we started to develop that  
18 other companies were charging for. And so this was separate  
19 than the Card Service Agreement -- you know, Acceptance  
20 Agreement. And we would charge for those.

21 Q Why not charge for all the analytics that you provided to  
22 merchants?

23 A Because our closed loop model, which we talked a lot  
24 about, right, which is we acquire merchants and have a direct  
25 relationship with them. We acquire cardmembers and have a

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1 direct relationship with them is unique. We get the  
2 information on who's spending and where they're spending,  
3 which is different than any of the other business models.

4 And so part of that is our value proposition, which  
5 is we help merchants drive -- we want to help merchants and  
6 create more value to merchants and, you know, help them to do  
7 that. I think a lot of those are part of our value  
8 proposition as part of acceptance.

9 There were some deeper analytics that some merchants  
10 would pay a consulting company to come in and do and pay them  
11 a lot of money, that we had -- we had more information than  
12 any of these other companies, because we had the transaction  
13 information; right? So the analytics we could do I think was  
14 competitively advantaged against people in the payment space  
15 and other companies as well.

16 Q Going back to the marketing for one second, some of these  
17 marketing programs would include offers to consumers to shop  
18 at one merchant versus another; correct?

19 A Yes.

20 Q And who would fund those offers? For example, if the  
21 marketing program was spend this much at Merchant Y, get \$25  
22 off, who would fund that?

23 A The discount would be funded --

24 Q Let's say the \$25, yes.

25 A The discount would be funded by the merchant.

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1 Q Okay. Were there situations where American Express would  
2 fund those with the marketing funds?

3 A I'm sure there were some as well, you know, part of the  
4 marketing agreement, but principally, the discounts were  
5 funded by the merchants.

6 Q A term the Court -- well, before I move on to a separate  
7 but related topic, in your response to one of the Court's  
8 questions a few minutes ago about how you take into account in  
9 pricing the price you're charging to other merchants in a  
10 particular area, you used the term "pricing spillover."

11 A Yes.

12 Q Can you explain what that term is?

13 A Sure. If we're negotiating with a particular merchant,  
14 right, we want to make sure that anything beyond the discount  
15 rate table there's agreement and there's a benefit and a  
16 commitment from both teams.

17 And we're very, very concerned about potential  
18 pricing spillover, which would be if we give, I think Your  
19 Honor said BJ's or some large -- a different price than  
20 Wal-Mart that may be a larger customer, right, you know, it  
21 sort of destroys the integrity. Then we're going to have to  
22 lower prices for another merchant in the category, a similar  
23 size merchant, and that hurts our economics.

24 And then, you know, once we start lowering price  
25 without the benefit that we would get through a commitment or

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1 a long-term commitment or a marketing program, it affects our  
2 economics, which affects our ability to spend on merchant  
3 value and cardmember value as well.

4 Q Are you familiar with the term "holdout" as it relates to  
5 American Express's merchant business?

6 A Yes.

7 Q And what does that term mean?

8 A Holdout to the millions of merchants that don't accept  
9 us.

10 Q And were there lists of the larger ones who didn't accept  
11 American Express?

12 A Most of the ones that don't accept -- the majority of the  
13 ones that don't accept are mid to smaller merchants.

14 Q Are you familiar with the term like a "top holdout list"?

15 A I know we had a big holdout list. So there were -- those  
16 were merchants that didn't accept that are -- probably Pojero  
17 at the time, Tom Pojero's organization would go after to try  
18 to sign.

19 So the top holdouts were on the prospect list for  
20 our proprietary sales organization.

21 Q And how would this concept of pricing spillover that you  
22 were just talking about relate to decisions around how and  
23 whether to sign particular prospects, I think was the term you  
24 used?

25 A Because all of those merchants fit into categories.

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1 They're fairly large, the ones that are targets for the  
2 proprietary sales organization. So acquiring a merchant of  
3 fairly good size, if we gave them a lower price than a  
4 merchant that we had currently and had for years and were  
5 servicing for years, I would be very, very concerned -- we  
6 would be very concerned about the pricing spillover, which is  
7 what I just described, giving a lower price to a new merchant  
8 to drive acceptance and then lowering price across the  
9 industry to other current customers of that same size.

10 Q How did that pricing spillover concept impact the  
11 analysis of the profitability of a particular price that you  
12 might offer to one of these prospects?

13 A Well, to that particular merchant, we do look at the  
14 profitability, right, but then have to calculate what the  
15 potential spillover effect would be; that if, in fact, other  
16 customers in that, you know -- in that same industry of  
17 similar size, if we were giving a lower price there, we'd have  
18 to give lower prices across the industry.

19 Q I want to go back to the discount rate tables. And if  
20 you could take a look at Plaintiff's Exhibit 1240, which is in  
21 your binder.

22 MR. ORSINI: Your Honor, this document is already in  
23 evidence.

24 Q The cover of this is MSA Executive Team. What's MSA?

25 A Merchant Services Americas.



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1 Q And as of 2011, was that a group that was headed by a  
2 woman named Kim Goodman?

3 A It was.

4 Q And to whom did Ms. Goodman report?

5 A She reported to me.

6 Q So Merchant Services Americas fell within your area of  
7 responsibility?

8 A Yes.

9 Q Now, if you take a look at the slide, Slide 6, it ends in  
10 Bates number 0091. You mentioned some analytics that the  
11 pricing team would do for you earlier. Is this an example of  
12 those analytics?

13 A It is.

14 Q I know it's hard to read and I apologize for that. But  
15 there's a reference in a couple places on this slide to the  
16 term "insistence," which is a term that is used in American  
17 Express. What does that term mean to you?

18 A Insistence is a term we use for our most loyal  
19 cardmembers.

20 Q And what role did insistence play in the decisions that  
21 you were making with respect to pricing?

22 A Well, you know, it's survey-based, right, so it's  
23 directionally correct, but surveys are surveys; right? And so  
24 we used that to, you know, evaluate how loyal our cardmembers  
25 would be, generally.

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1 Q And this analytic, is this something -- is this type of  
2 analytic something that you recall seeing before where there  
3 would be calculations based upon multiple elements of value?

4 A Insistence or --

5 Q Just generally, this calculation you see here, this  
6 assessment.

7 A Yes.

8 Q And what did you, in making your decisions about pricing,  
9 use this type of analytic for?

10 A Again, it was really important that the pricing team came  
11 in with all the different options and elements in the  
12 analytics that they did. And so we created -- you know,  
13 obviously, it created a value number, the right, comparing it  
14 to the competition, what we thought Visa and MasterCard's  
15 all-in price would be to the merchant.

16 And then I used this to determine -- we used this to  
17 determine, you know, how sellable this was, how commercially  
18 viable it was against the competition and against the value  
19 that we were calculating.

20 Q And there's a reference all the way over to the right in  
21 the gray box to "Amex value based premium at 50 percent  
22 surplus value captured." Are you familiar with this concept  
23 of surplus value that was calculated from these analytics?

24 A We didn't use it often, but it's in the document, so I  
25 knew what it -- I knew what it meant.

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1 Q Let me show you another document. If you could take a  
2 look at Plaintiff's Exhibit 0853.

3 MR. ORSINI: Your Honor, this one is -- this one is  
4 a confidential document. This page isn't, but the page that  
5 follows is.

6 A 0853?

7 Q 0853, yes. The cover e-mail is an e-mail from  
8 Ms. Elizabeth Langwith to Mr. Berry. Who is Ms. Langwith?

9 A I believe she worked for Jack Funda on the pricing team  
10 at the time.

11 Q And the subject is BUR document for Bill Glenn. Bill  
12 Glenn, that's you?

13 A Yes.

14 Q And what's BUR?

15 A Business unit review.

16 Q And what's a business unit review?

17 A It's a term used for periodic reviews of different parts  
18 of the business. Different divisions have different  
19 frequency, but it was -- it was normally against a business  
20 update or a major initiative or things that we were -- were  
21 important that needed focus.

22 Q And were these reviews that you would participate in?

23 A If it was a BUR of a direct report to me, I would  
24 participate.

25 Q And this unit was a direct report to you; correct?

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1 A Yes. The pricing, yes.

2 MR. ORSINI: Your Honor, I offer PX 0853 into  
3 evidence.

4 MR. HAMER: No objection.

5 THE COURT: PX 0853 is received in evidence.

6 (Plaintiff Exhibit 0853 received in evidence.)

7 Q Now, Mr. Glenn, if you could turn to Slide 2 which ends  
8 in Bates number 143. And I just caution you, let's not use  
9 specific numbers because they're confidential.

10 A Okay.

11 Q This is a slide entitled "Price Value Alignment by  
12 Industry." Is this another example of the type of analytics  
13 that the pricing team did for you?

14 A Yes. I think this is maybe a chart summary of the last  
15 document we -- some of the builds of value that we talked  
16 about and the rate.

17 Q So this is a table reflecting the types of calculations  
18 we were just looking at?

19 A I believe so, yes.

20 Q Now, there are a couple of different -- there are a  
21 number of columns here. The first one is the industry. Those  
22 are the industries by which American Express had different  
23 discount rates, is that right, or some of the industries?

24 A Yes. I don't know if they're all of them, but...

25 Q The next column is the Current AXP Discount Rate. I

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1 presume that's exactly what it says?

2 A Yes.

3 Q The next column, Current Price Premium versus Visa, what  
4 does that reflect?

5 A That's our -- the difference between our rate and what we  
6 think Visa's all-in rate to a merchant would be.

7 Q And when you use the term "all-in rate," what do you mean  
8 by that?

9 A Well, there's interchange. So there are different  
10 components of their pricing. There's interchange. There are  
11 network fees. There are acquiring fees. And so it's our best  
12 estimate as to what Visa's all-in rate is.

13 THE COURT: And this all-in rate, is this a -- does  
14 this include the various different rates that Visa charges for  
15 different cards?

16 THE WITNESS: Yes. So --

17 THE COURT: Because they're expensive -- according  
18 to testimony we've had here, there are some cards with heavy  
19 rewards that have a higher discount rate at the merchant than  
20 other cards which have no rewards or fewer rewards.

21 THE WITNESS: Right. That is correct. And that's  
22 why I said it's as good an approximation as we can get by  
23 industry, because they price by card product. But they also  
24 don't have the acquiring business and the -- I think the only  
25 one that's really published is the interchange rate that goes

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1 directly to the banks.

2 But there's a network fee. There's a payment they  
3 make to acquirers, and then there's a card -- different  
4 pricing by card product in the mix of that spend. So all of  
5 that translates into the merchant discount rate.

6 Q The next column is entitled "Maximum Rational Price  
7 Premium 100 Percent VC." What does that mean?

8 A I believe that reflects the total build of all the  
9 elements we looked at before, which is insistence and spend  
10 and those. And this is the difference between what that adds  
11 up to and the Visa's rate.

12 Q So the prior slide we were looking at used the term  
13 "surplus." This would be the full surplus?

14 A I believe so, yes.

15 Q And then the next column is entitled "Rational Price  
16 Premium at 50 Percent VC." What does that reflect?

17 A I think that's 50 percent of --

18 Q So it's half of a hundred?

19 A It looks like 50 percent of a hundred, right.

20 Q And then if you skip over -- well, what's the next  
21 column?

22 A (Reviewing.) I'm not sure of that calculation.

23 Q Okay. Do you know what the next column is, the Net  
24 Benefits to AXP from Shift to 50 Percent VC?

25 A I think it's the calculation of the [REDACTED] times the current

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1 volume.

2 Q So if you took the current volume in that industry and  
3 increased the discount rate by that [REDACTED], that's the result?

4 A I believe so.

5 Q And there's a total number down at the bottom that's over  
6 a billion dollars and we won't say the precise number?

7 A Yes.

8 Q And what does that reflect?

9 A I think it's the sum total of all the industries added  
10 up.

11 Q Now, do you recall having conversations with the pricing  
12 team about analytics like this where they would present to you  
13 on the maximum rational price premium?

14 A Yes.

15 Q And what role did those presentations, based on these  
16 analytics, play in your decision-making process about prices  
17 for merchants?

18 A Well, it helped me to assess that there's no way we were  
19 going to go to market with these recommendations.

20 Q And what do you mean by that?

21 A You know, as I talked about, we priced on value. And a  
22 lot of that value of pricing was the economic value to a  
23 merchant of the transaction, so the transaction size. We  
24 priced on looking at what the competition was doing, right,  
25 and then our costs.

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1           And so I can tell you what happened in the room when  
2 they presented it, which is essentially turn to the next page,  
3 because there was no way we would have integrity going to  
4 market with prices like this. It wouldn't -- we couldn't sell  
5 it. We'd lose credibility with the merchants, which is  
6 really, really important. And I don't think our folks could  
7 have confidence going in and trying to sell this.

8 Q     What do you mean by turn to the next page?

9 A     To the deck. Whatever the next page was, essentially,  
10 we're not -- you know, we're not looking at these options.

11 Q     And you said you didn't think you could have credibility  
12 selling this in the market. What did you mean by that?

13 A     You know, all of these -- a lot of the -- that said value  
14 recapture were one-on-one conversations or our teams going in  
15 and talking to merchants about the value we created and the  
16 pricing recommendations. And, you know, these merchants are  
17 big businesses. They're really sophisticated.

18           We actually -- I feel really good about the  
19 credibility of our people and how they represent us every  
20 single day in front of these merchants and the work that they  
21 do. And so A is, we wouldn't -- we couldn't sell this in;  
22 right? And some of the areas in here were, you know, internal  
23 views of loyalty, but they're survey-based; right? And so  
24 it's really, really important that in those discussions we  
25 maintain a lot of credibility and integrity.

SHERRY BRYANT, RMR CRR



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1           And the other fact is that the competition was  
2 significantly lower; right? And so all of a sudden now --  
3 which we work on every single day, which is defending our  
4 premium. That happens every single day with the merchant  
5 team. All of a sudden, you're defending your premium of 34  
6 basis points and then walking in and trying to defend a  
7 premium of 265 basis points, and it's just not viable.

8       Q     What do you mean, not viable?

9       A     They wouldn't -- they wouldn't buy it, and I didn't want  
10 our organization going in and trying to sell it.

11       Q     You can put that document aside.

12           While we're on the discount rate, you mentioned  
13 something earlier when we were talking about co-brand  
14 relationships. You said that the merchant business got  
15 84 percent and the issuers got 16 percent. Can you explain  
16 what that means and what you were referring to, percentages of  
17 what?

18       A     Sure. It's an internal allocation. So there's the  
19 discount rate that we charge merchants, and that comes back to  
20 the company. About 84 percent -- and it varies a little bit,  
21 but I think, on average, 84 percent of those revenues go to  
22 the issuing businesses and 16 percent go to the merchant  
23 business. So that creates the revenue for each business from  
24 the discount rate.

25       Q     Okay. So of all the discount revenue coming in that's

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1 based upon the transactions that flow over to the merchants at  
2 particular discount rates, that is allocated internally?

3 A Yes.

4 Q And what you're describing is 84 percent of that revenue  
5 goes to the issuing business?

6 A Businesses, yes.

7 Q Businesses. And what businesses were those or are those?

8 A The consumer card business, our small -- our small  
9 open -- our small business division, the corporate card  
10 business. You know, the same internationally, as well.

11 Q And what percentage is retained in the merchant business?

12 A Sixteen percent.

13 Q Now, what did the merchant business use that revenue, its  
14 16 percent of the overall discount revenue, to do?

15 A So it funds the -- all the folks we have in the sales and  
16 client management organization. That's our revenue stream;  
17 right? So it funds the people that we have for sales and  
18 client management, the marketing team, the information  
19 insights team, the network development team that services and  
20 runs transactions through that -- help run transactions  
21 through the network, and our marketing programs, as well.

22 Q When you were the head of Global Merchant Services, were  
23 you an officer of the company?

24 A I was, yes.

25 Q Were you involved in strategy discussions with the other

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1 officers of the company?

2 A Yes.

3 Q That would involve strategy conversations with the  
4 issuing businesses you just referenced?

5 A Yes.

6 Q And based upon those conversations, as a general matter,  
7 what was your understanding of what the issuing businesses did  
8 with their 84 percent of the discount revenue you were just  
9 describing?

10 A Similarly, their organizations, so the people in those  
11 organizations, funding all the rewards programs, card  
12 acquisition programs, co-brand relationships, so all the  
13 things that run the business and add value to the cardmember  
14 base.

15 Q Now, you talked about some elements of value earlier that  
16 American Express provides to merchants. During the time that  
17 you were managing first U.S. and Canada and then Global  
18 Merchant Services, about a decade, how did the value that  
19 American Express delivered to merchants change, from your  
20 perspective?

21 A I think it increased, and we worked really hard to make  
22 it increase. And so, you know, when I first got to American  
23 Express, the marketing team was decentralized, so we created a  
24 centralized marketing team. The -- there was no Business  
25 Insights team, so we created that.

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1           The network development team was -- wasn't  
2 centralized. We didn't have necessarily a telemarketing team  
3 for acquisition and client retention. So we spent a great  
4 deal of money on and continuing to spend it on acquiring more  
5 merchants, retaining our merchants, because we added folks to  
6 the organization, proprietary folks in client management and  
7 sales.

8           We centralized the marketing group. We  
9 centralized -- we created this Business Insights group. And,  
10 you know, the objective was to continue to add value to  
11 merchants, because it was competitive. We wanted to acquire  
12 as many merchants, you know, as we could; and we also wanted  
13 to retain those merchants.

14 Q     How did centralizing the marketing team benefit  
15 merchants?

16 A     Then we would have a centralized center of excellence for  
17 marketing rather than just regional folks. And it allowed us  
18 to attract, I think, stronger marketers, people who understood  
19 what our objectives were. Also, an organization that actually  
20 spent time on marketing and partnering with our client  
21 management organization to market with large merchants.

22           And at the same time, we created a small merchant  
23 marketing function so that we could market with small  
24 merchants and provide more value to those merchants as well.

25 Q     The Court has heard some testimony and I think we'll hear

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1 more testimony in the coming weeks about -- testimony about  
2 marketing towards large merchants. You mentioned marketing  
3 for small merchants.

4 A Right.

5 Q How would American Express engage in marketing with the  
6 smaller merchants in the United States?

7 A So we created things like Marketing in a Box, which was  
8 an easy-to-use program. We didn't have client managers  
9 assigned to the millions of small merchants; right? So they  
10 had people they could talk to and numbers that they could  
11 call. But I thought there was a gap in terms of how we could  
12 create more value for small merchants. So one of the  
13 initiatives we had was Marketing in a Box, which was an  
14 easy-to-use tool for small merchants.

15 We also did things in the community and  
16 with point-of-purchase materials that were iconic for the  
17 local area that -- we would use local artists so we could get  
18 more and more merchants to put up these point of purchase.

19 So there was a concerted effort not just for the  
20 large merchants but with the smaller merchants to add as much  
21 value as possible.

22 Q If you could take a look in your binder -- look at some  
23 examples of this -- at Defendant's Exhibit 6791.

24 MR. ORSINI: Your Honor, this one we can display on  
25 the public screen.

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1 THE COURT: All right.

2 Q This looks like a presentation by you, Mr. Glenn. What  
3 is this document?

4 A It's a review of the Merchant Services Business.

5 Q If you want to flip through it, my next question is, to  
6 whom would you have presented this document?

7 A I presented some internally as well, but I think this is  
8 a review for the board.

9 Q The American Express Board of Directors?

10 A The American Express Board.

11 MR. ORSINI: Your Honor, I offer DX 6791 into  
12 evidence.

13 MR. HAMER: No objection.

14 THE COURT: All right. Defense Exhibit 6791 is  
15 received in evidence.

16 (Defendant Exhibit 6791 received in evidence.)

17 MR. ORSINI: Thank you.

18 Q Mr. Glenn, if you could look at Slide 20, which ends with  
19 Bates numbers 5579. What is this slide depicting?

20 A It depicts and tries to communicate, right, the -- how  
21 our value differentiates -- or differentiated value versus the  
22 competition, how do we add more value to merchants we believe  
23 than the competition does.

24 And so you see the consumer and cardmembers on the  
25 left; right? They provide data and relationships to our

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1 network. On the right, it's the data and relationships that  
2 the merchant business has and other businesses.

3 So I talked earlier about the closed loop. This  
4 is -- we've had several attempts to try and depict the closed  
5 loop; right? But I think at the heart of it, it is about data  
6 and relationships and how we use those. So the relationships  
7 we have with the cardmembers and relationships we have with  
8 businesses and then the data that we get for that, which --  
9 from that, which powers up both the card proposition and the  
10 merchant proposition.

11 Q Why was American Express focused on providing  
12 differentiated value?

13 A Because we have to. I mean, our business model is based  
14 on value and the closed loop. And so we don't have the scale  
15 that the other folks in Visa and MasterCard have. And so it's  
16 really important in terms of justifying our price and our  
17 premium that we differentiate the value. That's what the  
18 model stands on.

19 Q Now, if you take a look at Slide 25, which ends 5584,  
20 this picks up on some of the things we were talking about a  
21 minute ago, a reference to marketing capabilities. And on --  
22 there are sort of four examples. The one on the upper left is  
23 the Marketing in the Box. Is that what you were describing a  
24 few minutes ago?

25 A Yes.

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1 Q So what was it? What was in the box?

2 A You can see the -- so they received some insights in  
3 terms of who their shoppers were, broadly, not personally  
4 identified individuals; right? And also, it was an  
5 easy-to-use direct mail campaign, right, to reach those  
6 customers with offers.

7 Q Was there a charge for that?

8 A I don't believe there was, no.

9 Q To the right is another offering referred to as  
10 registered card. What is registered card?

11 A So registered card was -- it was a platform to provide  
12 value to cardmembers and merchants. So a cardmember would  
13 register their card online, right, for an offer for a  
14 particular merchant. Then they would be able to go in and use  
15 the card. Didn't have to use a coupon. So what we found is a  
16 lot of cardmembers were reluctant to come in with a coupon  
17 into a restaurant.

18 And also, not only use a coupon in a particular --  
19 in that restaurant, but also the ability to get that  
20 transaction done at that particular restaurant, a restaurant  
21 or a merchant would have to train their staff. What is this  
22 coupon? They may not have been able to train their folks to  
23 do it. And so it was dissatisfying for our cardmembers and  
24 also for the merchants. It was disruptive.

25 So registered card allowed -- it was a coupon-less,



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1 right, offer. So all you did was register online. You'd go  
2 to the restaurant, you'd swipe your card, and you would get a  
3 credit on your statement.

4 Q You'd register online at American Express's website?

5 A Yes.

6 Q And would merchants have to choose to participate in  
7 this?

8 A Absolutely, yes.

9 Q Down on the lower left-hand side, the next offer is  
10 "Preferred loyalty currency for targeted cardmembers (X  
11 points)." What is that referring to?

12 A It's a program that -- a promotional program, again, that  
13 a merchant could run. And it would be funded by one time, two  
14 times, three times the rewards that they have on their card.  
15 Points and rewards.

16 Q So shop at Costco this month, get triple points?

17 A And whatever, yes. Whatever the loyalty program is for  
18 that particular card.

19 Q Costco is a bad example.

20 To your right, "High exposure buzz-generating offers  
21 (daily wish)," what is that?

22 A So we try to create a lot of, you know, excitement in the  
23 marketplace. And this was an idea that came out of the  
24 marketing group, which was how do we create this buzz in the  
25 marketplace around the holidays. So it was hard to get new

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1 items from different manufacturers, whether it was -- I think  
2 there was a Best Buy, just some other products; right? And we  
3 created this online sort of auction that you could bid on  
4 these. So it was a -- sometimes using a merchant, sometimes  
5 using manufacturers. And it was a program that we ran to  
6 support the cardmember business.

7 Q If you take a look at Slide 26, which ends at 5585, the  
8 next page, what is this slide showing the Board?

9 A Two examples of both the previous page, an example of X  
10 points and an example of registered card.

11 Q What's the example for X points?

12 A It's a program that we ran with Home Depot. Again, as I  
13 said earlier, merchants want to acquire new customers, engage  
14 and build loyalty in those customers. So I think this program  
15 addressed that need for Home Depot.

16 Q There's a response rate listed under the results. Why  
17 was that something you were presenting to the Board?

18 A It was, I think, off the charts as response rates go.  
19 Sixteen percent is very, very strong. Normally, these  
20 programs run 1 or maybe 2 percent.

21 Q And when we're talking about a marketing program like  
22 this, what is a response rate?

23 A It's when cardmembers redeem the offer. So there's an  
24 offer out and they redeem it.

25 Q Okay. And the example on the right for registered card,

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1 what is that example?

2 A So similarly, right, which is offered by Best Buy, and it  
3 was spend 200 and get a 40-dollar credit. And it was a  
4 14 percent response rate.

5 Q And, in your experience, how is a 14 percent response  
6 rate in the marketing program?

7 A Very, very high.

8 Q Okay. We can put that document aside. We're going to  
9 come back to it later, but we don't need to focus on it now.

10 The Court has heard a great deal of testimony about  
11 something called value recapture.

12 A Yes.

13 Q What was value recapture, from your perspective?

14 A So value recapture was a program we initiated, I think,  
15 in 2005, which was to better align the discount rate we were  
16 charging with the value we were delivering to merchants.

17 Q And whose recommendation was it to begin value recapture?

18 A It was mine.

19 Q And whose decision ultimately was it to engage in value  
20 recapture?

21 A It was mine.

22 Q And why did you believe when you recommended this and  
23 decided to do it in 2005 that value recapture was a good thing  
24 for American Express to do?

25 A Well, I think, you know, a couple of factors. We hadn't

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1 raised prices in 10 or 15 years, depending on the industry,  
2 just generally, 10 or 15 years, depending on the industry;  
3 that our costs had gone up. We were -- our costs in the  
4 merchant business and certainly our costs on the cardmember  
5 business.

6 And third is that the price we were receiving or the  
7 price we were charging merchants wasn't aligned, I didn't  
8 think, with the value we were creating for merchants.

9 Q So you mentioned that the costs in the merchant business  
10 were going up, and you also mentioned that the costs in the  
11 cardmember business was going up.

12 What relevance did increased costs on the cardmember  
13 side have to your decision to engage in value recapture on the  
14 merchant side?

15 A Overall, you know, responsibility for the company. And,  
16 as I said, you know, when costs go up and we're -- costs are  
17 going up because we're spending more and more money on our  
18 folks; and on the value from the merchant side, equally we're  
19 spending more money. And I really support the money we're  
20 spending on the cardmember side, because that drives higher  
21 spend with better points, better service -- better rewards,  
22 better service.

23 And so, you know, in order to create value to  
24 merchants and acquire more merchants and keep them accepting,  
25 we need the cardmembers to spend, right, and create value --

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1 economic value for the merchants.

2 And so I wanted to make sure that we would continue  
3 to fuel and fund those programs from the merchant and from the  
4 cardmembers as well, ultimately creating value for the  
5 merchants.

6 Q Why did you think it was important to fuel those  
7 cardmember investments as it related to getting and retaining  
8 merchants?

9 A Because merchants want to see higher spending, loyal  
10 cardmembers. And when they do that, transaction sizes are  
11 higher, we're creating better economic value for the  
12 merchants. And if we're able to continue to do that, that  
13 keeps us acquiring more merchants and retaining those  
14 merchants.

15 So, you know, I talked earlier, it's not just the  
16 contract negotiations that the merchants are talking to us  
17 about, the rate and the value. It's when we're in there every  
18 single day. And so it's really important for the model to  
19 work that all of the businesses are supporting, you know, the  
20 value proposition for merchants.

21 Q Prior to the decision to engage in value recapture, what  
22 had been the trend in the average discount rate in the United  
23 States for American Express?

24 A For -- I don't remember the particular year, but it has  
25 been coming down, I think, 3 to 4 basis points a year.

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1 Q And when value recapture was implemented through when the  
2 value recapture initiative -- well, let me withdraw that and  
3 lay a foundation for the question first.

4 Was there a time when the value recapture initiative  
5 came to an end?

6 A Yes.

7 Q And when was that?

8 A I think it was 2010.

9 Q Okay. So during the time between when value recapture  
10 started in 2005 through when it ended in 2010, what effect did  
11 the value recapture initiative have on that prior trend of  
12 declining average discount rate in the United States?

13 A It slowed it down. So I think it came down to one basis  
14 point loss a year, something on average like that.

15 Q Now, are you familiar with the concept of spend mix  
16 changes affecting the average discount rate that American  
17 Express is charging in the United States?

18 A Yes.

19 Q Okay. Can you explain to me what that means?

20 A Sure. We have different -- we have different rates for  
21 different industries; right? And so as the spend changes by  
22 industry -- and even within industry, because there are sort  
23 of segments within industry -- it affects the overall discount  
24 rate. So it's a combination of different industries and rates  
25 that come down in certain industries as well.

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1 Q What effect do pricing changes in a particular year in an  
2 industry have upon the impact of mix on the average discount  
3 rate in future years? I can ask that --

4 A I'm not sure.

5 Q You said that one thing that related to this spend mix  
6 change was that you were lowering discount rates in certain  
7 industries; correct?

8 A Yes.

9 Q And which industries tended to have the lower discount  
10 rates?

11 A Everyday spend industries, supermarkets, drug stores, so,  
12 you know, everyday spend categories.

13 Q And why were the rates lower for those industries as  
14 compared to others?

15 A Because our value wasn't as strong as it was in other  
16 industries, right, and as well as where the competition was in  
17 those particular industries.

18 Q And by competition, to whom are you referring?

19 A Visa and MasterCard.

20 Q And so what impact would a shift in spend to those  
21 industries have upon the average discount rate in future  
22 periods?

23 A It would lower the discount rate.

24 Q You also talked about intra-industry mix?

25 A Yes.

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1 Q What does that mean?

2 A Within an industry, there are -- I can't think of an  
3 example here. But there are sort of subsegments of  
4 industries, different types, right, so they may have different  
5 rates as well, but, again, table-based for those  
6 subindustries.

7 Q What impact does a change in mix to the lower discount  
8 rate industries have upon American Express's margins?

9 A Well, overall, right, if the discount rate is coming  
10 down, our overall margins are shrinking.

11 Q Is that even if the cause of the decline is a change in  
12 mix?

13 A Yes.

14 Q Why is that?

15 A Because all of the spend adds up to a number of revenue;  
16 right? And so if discount rate comes down, the overall margin  
17 comes down as well.

18 Q So going back to the value recapture. When you made the  
19 decision to implement value recapture, can you describe for  
20 the Court generally what your decision-making process was as  
21 to identifying those industries that would be subject to value  
22 recapture?

23 A Sure. So when I made the decision, there was probably  
24 another six or nine months, essentially, before we went to  
25 market, so meaning to sell it in, to implement value



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1 recapture.

2 And so a lot of the work that needed to take place  
3 were, A, making sure that we had value per industry, and we  
4 did a lot of work to do that; that the value that -- the  
5 decision -- or the pricing that we came up with was sellable,  
6 as I indicated earlier, some of the analytics that the pricing  
7 team had done.

8 Three is that our organization was trained and  
9 confident in terms of the materials, you know.

10 And fourth, that we understood that, you know,  
11 marketing would play a role, the client management team would  
12 play a role, the analytics team would play a role, in terms of  
13 putting together the value proposition.

14 And then also that internally, like for our folks in  
15 the service aspects were ready for calls from merchants who  
16 had questions about it or disputing it or -- and that they  
17 were also equipped, folks on the phone, to receive these calls  
18 and talk about the value and make some decisions in terms of  
19 when merchants asked if there were, you know, any other  
20 options to continue with the same rate.

21 Q Let's stick with that last point. What options did  
22 people in the call centers have if merchants would call in and  
23 raise concerns about value recapture?

24 A Well, you know, we were -- I was particularly concerned  
25 about it because they were phone-based, right, so that this

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1 wasn't a one-on-one conversation with someone who was there in  
2 person. And so I wanted to make sure that it was negotiable  
3 as well. And so we armed them with not only the training  
4 about what our value proposition was, but in the case of  
5 merchants going to cancel, defer some of the value recapture  
6 for a period of time.

7 Q What size merchants would be the merchants who were  
8 calling in to these 800 numbers?

9 A You know, as I said, smaller merchants. I don't remember  
10 the spend threshold, but if you think about your -- you know,  
11 the florist or some of the smaller businesses. Most of those  
12 were acquired by a third party acquiring.

13 Q That's through the ESA channel or ESA channel that the  
14 Court has heard about?

15 A Yes. External sales agents, yes.

16 Q Were the value recapture decisions made on a sort of  
17 national basis, that is to say, you made the decision with  
18 respect to all industries, or were there decisions by  
19 industry?

20 A Well, the decisions were made by industry, right. And I  
21 don't remember how many were covered in terms of the -- in  
22 value recapture. Some we didn't, because, again, as I said,  
23 the value we're providing and where the competition was,  
24 right, determined that we were probably getting the right  
25 value for what we were -- or the right price for the value

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1 that we were delivering and where the competition was.

2 Q In terms of process, when you were looking at value  
3 recapture for a particular industry, what would be the  
4 decision-making process? Who would make the recommendation,  
5 what would they make it based upon, and what was your role in  
6 making the decision for that industry?

7 A By industry, the pricing team did a lot of the analytics,  
8 right, all, essentially, the analytics that we talked about  
9 earlier, where we thought the competition was, the value  
10 drivers. And then the team would get together and, you know,  
11 discuss that pricing recommendation, and ultimately I would  
12 make the final decision.

13 Q Were there instances where there was a recommendation  
14 made for value recapture that you decided not to go with?

15 A Yes.

16 Q And there were instances where a recommendation was that  
17 you decided to go with?

18 A Yes.

19 Q Now, what factors, when you were looking at those  
20 analytics, did you have in mind as to whether or not you would  
21 agree with the recommendation?

22 A Well, as I said earlier, I think when we were looking at  
23 the pricing -- the pricing build and the surplus, right, that  
24 laid it out and then, you know, ultimately, getting feedback  
25 from the team and then making a decision whether or not it

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1 was -- whether or not we could sell it in, whether or not it  
2 made sense.

3 And that was very important, as I said earlier, not  
4 just because of the credibility -- of the organization's  
5 credibility with the merchant that they interact with all the  
6 time, right, but it was also how prepared the organization was  
7 and whether, you know, they felt like the value that we were  
8 delivering justified our price.

9 Q So let's take a look, if we could, in your binder at  
10 Defendant's Exhibit 2714.

11 MR. ORSINI: Your Honor, this one does have  
12 confidential information on it. And for the Court's  
13 reference, it's also been marked for identification as  
14 Plaintiff's Exhibit 0368, but has not yet been moved into  
15 evidence.

16 Q Now, Mr. Glenn, if you'd just look at the front of this,  
17 it references ESNA Business Unit Review, ES Pricing. So what  
18 was ESNA?

19 A Establishment Services North America. So it was the U.S.  
20 and Canada.

21 Q So this is the merchant business for U.S. and Canada?

22 A Yes.

23 Q And it later became merchant services?

24 A Yes.

25 Q And at this time, you were responsible for ESNA; correct?

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1 A I was.

2 Q And ES pricing would have been a group that was reporting  
3 to you at that time?

4 A You know, I'm not sure. Sometime in 2005, I took  
5 responsibility for pricing. I'm not sure if it was in  
6 September. Before that, the finance team had pricing,  
7 reporting to Dave House. But this could be that period of  
8 time when I took over pricing. I just don't remember the  
9 date.

10 Q And would you have been involved, even before you took  
11 over pricing in presentations, about pricing initiatives that  
12 were going to be undertaken for the merchant groups you were  
13 responsible for?

14 A Yes. Yes.

15 MR. ORSINI: Your Honor, I offer DX 2714 into  
16 evidence.

17 MR. HAMER: No objection.

18 THE COURT: All right, DX 2714 is received in  
19 evidence.

20 (Defendant Exhibit 2714 received in evidence.)

21 Q If you could take a look at page 4, which ends in Bates  
22 number 9807. What is this --

23 MR. ORSINI: If we could blow it up, because it's  
24 really hard to read in the document.

25 Q What does this slide depict, Mr. Glenn?

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1 A It shows American Express's discount rate, Visa's  
2 discount rate over time, and the premium between the two -- or  
3 the difference between the two rates.

4 Q And what was the trend in the premium?

5 A So the premium had come down as our discount rate --  
6 Amex's discount rate had come down, and Visa's had risen.

7 Q And what was the relevance to those trends in your mind  
8 with respect to value recapture?

9 A Again, it came down to the value that we were creating  
10 for merchants and that -- you know, looking at the decrease in  
11 discount rate, which affects our cost, which affects our  
12 margins and, you know, the ability to invest more in the  
13 business.

14 Q If you could take a look at page 13, which is Bates  
15 ending in 9816.

16 A I'm sorry?

17 Q The page ending 9816. This is a page with respect to  
18 lodging. Was the lodging industry one of the industries that  
19 was -- in which value recapture was applied?

20 A Yes.

21 Q And as reflected on this slide, what was the reason for  
22 the value recapture initiative in the lodging industry?

23 A We hadn't raised prices in ten years. The premium had  
24 come down. The corporate travel had rebounded in terms of  
25 just generally the environment had rebounded and, you know,

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1 again, the value we were creating in that industry and  
2 delivering in that industry.

3 Q Do you recall reviewing industry level analyses like  
4 these for each industry to which value recapture was applied?

5 A Yes. I mean, that was the detail around making a  
6 decision by industry to implement value recapture.

7 Q And if you take a look at the page ending 9818, and this  
8 is a reference to "Offline Travel Agent Tour Operator." Let's  
9 start with, what does offline mean?

10 A The -- well, it's the opposite of on -- it's the opposite  
11 of online. So it's directly with travel agencies, right, not  
12 booking online.

13 Q So we're talking Liberty Travel at the mall, not  
14 expedia.com?

15 A Correct.

16 Q Was that one of the industries in which value recapture  
17 occurred?

18 A It is, yes.

19 Q Now, on the top of the slide, it says: "We realigned  
20 pricing with increased value in the industry as more travel  
21 agents shift to a 'merchant model.'" What does that mean?

22 A So the merchant model is agents where they essentially  
23 become the merchant of record. It's not a -- essentially, a  
24 pass-through to the end user; right? And so there was value  
25 we were creating for the industry for that particular agency,

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1 for that particular -- who became a merchant; right? So it  
2 became more of a merchant than the value that we were  
3 delivering there.

4 Q And how was that different from when it was a  
5 pass-through?

6 A It was because those -- those costs were borne by the end  
7 user, not by that particular agency.

8 Q If you could look at the slide ending in 9821. This one  
9 relates to the cruise industry. Was the cruise industry part  
10 of value recapture?

11 A It was, yes.

12 Q And, again, why?

13 A Again, the competition had increased prices. And it says  
14 eliminating any premium, and we continue to add more value to  
15 the industry. It wasn't aligned with some of the other T&E  
16 industries; right? And we believed we had a very strong value  
17 proposition within the cruise industry.

18 Q So if we could take a look at Defendant's Exhibit 7413,  
19 please. And the cover of this is an e-mail --

20 MR. ORSINI: Your Honor, this one we can display on  
21 the public screen, if you'd like.

22 Q This is an e-mail from Mr. Funda to you; correct?

23 A Yes.

24 Q And it's referencing revised pages for the BOD  
25 presentation. What's BOD?



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1 A I believe it's Board of Directors for American Express.

2 Q And if you turn to the page ending in 5628, it says it's  
3 a draft price presentation; correct?

4 A Yes.

5 MR. ORSINI: Your Honor, I offer DX 7413 into  
6 evidence.

7 MR. HAMER: No objection.

8 THE COURT: All right. DX 7413 is received in  
9 evidence.

10 (Defendant Exhibit 7413 received in evidence.)

11 Q I just have a question about one page in this document,  
12 Mr. Glenn. If you could look at the page ending in 5630, and  
13 what does this slide depict?

14 A It shows the discount rate from American Express from --  
15 it looks like 2004 on, what the rate would have been without  
16 value recapture and what it was -- the actual discount rate at  
17 the end of 2007 with value recapture.

18 Q And what does it show the difference in the trend was?

19 A That it was -- it came down, but didn't come down as much  
20 as it would have without value recapture.

21 Q Now, when you were making the decision to engage in value  
22 recapture, did you believe that there were any risks to the  
23 business associated with that decision?

24 A Yes.

25 Q What did you identify those risks to be?

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1 A Well, we were, you know, constantly under pressure to  
2 lower our rates that we have to defend every single day,  
3 that -- and so the risk of not acquiring more merchants or  
4 losing merchants in terms of them cancelling was about as big  
5 a risk as we have in our business model. So more merchants  
6 and retaining those merchants were really, really important.

7 Q Were there debates within the company about whether to  
8 engage in value recapture?

9 A There were some, yes.

10 Q And what were the ways that you identified to help  
11 mitigate the risks that you've just described?

12 A I told you that after we went through the analysis,  
13 making sure that -- A is we had value proposition to defend  
14 what our recommendations were and where we were negotiating;  
15 that the organization had the confidence to go in and talk to  
16 merchants about that; that internally folks were aligned and  
17 trained, and, you know, that we continue to power up the --  
18 you know, the value proposition continually.

19 So it wasn't something that we had done three years  
20 ago and we decided to raise rates. It was ongoing. Powering  
21 up our marketing programs, to do more on information and  
22 insights, marketing to small and large merchants. So all  
23 those were, you know, continuing to take place, and making  
24 sure that we continue to spend against those programs.

25 Q Do you recall whether there were any, focusing on large

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1 merchants, large merchants that canceled American Express  
2 acceptance as a result of value recapture?

3 A I don't believe any large merchants canceled.

4 Q I will spare you showing you your PMP to confirm that  
5 point. But to what do you attribute the fact that there were  
6 not large merchant cancellations even while value recapture  
7 was being rolled out?

8 A That there were some -- a lot of negotiations and a lot  
9 of discussions. And some of these negotiations took place  
10 over nine months and involved our folks with the merchants.

11 Q And just as a general matter, what form did these  
12 negotiations take? Were the merchants able to be exempted  
13 entirely from value recapture? Were there other aspects of  
14 the negotiations?

15 A So there was -- there were deferrals of some of the  
16 implementation. There were discussions about more marketing  
17 programs, distribution card agreements, things I talked about  
18 earlier, right, more marketing programs, more insights. It  
19 was all part of those negotiations.

20 Q When you say deferrals, what do you mean by that?

21 A That we wouldn't implement on January 1st. It could be a  
22 later date. There were some things done to -- because during  
23 value recapture, too, we created new rate tables, right,  
24 essentially, for new rates. And some merchants we gave the  
25 ability to move into a different rate, a higher band earlier

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1 and projected than they actually did. So there's a lot of  
2 negotiations around.

3 Q I just want to make sure we explain what that last piece  
4 was. You said you gave them the ability to move into a higher  
5 band earlier than they might have otherwise been able to?

6 A Correct.

7 Q What does that mean, and what's the impact on the  
8 merchant?

9 A Sure. The higher band -- we established new bands or had  
10 rate tables, volume bands; right? So then when they moved --  
11 as I talked about earlier, when they moved into a higher band,  
12 they would get a lower rate. So sometimes --

13 THE COURT: I understand that. We've had other  
14 testimony on that.

15 MR. ORSINI: Thank you, Your Honor.

16 Q Now, closing out the value recapture discussion, you  
17 testified earlier that there was a decision made at some point  
18 to end value recapture; correct?

19 A Yes.

20 Q And why was that decision made?

21 A Well, it was made because -- in terms of having price  
22 aligned with value, right. Felt very, very comfortable about  
23 where we were and where the competition was, because all of  
24 that factored into, you know, value recapture at the outset.  
25 And then I also -- I also believe that, you know, we felt

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1 comfortable that there was an alignment between price and  
2 value and that the -- it no longer became a program or  
3 initiative. It was more of an ongoing look at the value that  
4 we had for merchants.

5 Q And who was involved in the decision to stop value  
6 recapture?

7 A Ed Gilligan.

8 Q Okay. Move on to a separate topic.

9 MR. ORSINI: Your Honor, I don't know -- it's  
10 earlier than I thought. We can keep going.

11 THE COURT: How long will you be examining this  
12 witness on direct?

13 MR. ORSINI: My guess, Your Honor, is I have maybe  
14 another hour and 15 minutes. I'm going to try and shorten it,  
15 but that's my best estimate as I stand here right now.

16 THE COURT: Why don't you take the next part of it,  
17 and we'll take a break around 11:00?

18 MR. ORSINI: Sounds good.

19 THE COURT: Unless -- does anyone want to break now?  
20 No? Okay.

21 MR. ORSINI: Continue, we shall.

22 Q We've talked a couple times about the coverage gap or the  
23 merchants who don't accept American Express. Was improving  
24 merchant coverage something that you were focused on in your  
25 responsibility for merchant services?

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1 A Every single day in the organization, primary  
2 responsibility is to acquire merchants, more merchants, and to  
3 retain them.

4 Q And why was coverage something that you were focused on?

5 A Well, it's at the heart of -- it's at the heart of our  
6 business; right? Getting more merchants to accept drives both  
7 spend and perceptions of coverage as well, and that it's  
8 important for the economics of the business, as we talked  
9 earlier, so that we had more money to put into value to our  
10 merchants and the card side had more money to invest in the  
11 cardmembers business.

12 Q You mentioned earlier that most of the merchants who  
13 don't accept the card are small merchants. Are you familiar  
14 with the term "spend coverage"?

15 A I am.

16 Q And what is spend coverage?

17 A The calculation of spend coverage is where plastic is --  
18 where plastic is accepted by merchants, what percentage of the  
19 dollar amount is spent on American Express -- not percentage  
20 of the dollar amount spent on American Express, but where our  
21 cardmembers can use their card.

22 Q And LIF coverage is the locations of coverage, how many  
23 of the merchants actually take the card?

24 A Locations in force, yes.

25 Q Which number tends to be higher, in your experience,

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1 spend coverage or locations in force coverage?

2 A Spend coverage is higher.

3 Q And why is spend coverage typically higher?

4 A Well, the -- so if you look at the transaction size of  
5 different industries, right, it's higher in travel and  
6 entertainment than it is in supermarkets in terms of the  
7 actual transaction and -- you know, and the spend number.

8 Q So if American Express has a higher spend coverage  
9 figure, why does it matter to the business that there are all  
10 these small merchants who do not accept the card?

11 A Because people want utility of the card across all  
12 industries. So it's not just spending in T & E, it's spending  
13 across the board. So what we know is that coverage gaps  
14 affect not only the spend, but cardmembers' and prospects'  
15 perception of where they can use the card and how they can use  
16 the card. So I'd love to have 100 percent coverage.

17 Q Were there any studies that you were familiar with that  
18 were conducted to measure the coverage, the perceptions of  
19 coverage that cardmembers had of larger merchants?

20 A Yes. We did a lot of work on perceptions of coverage.

21 Q And can you give some examples of some studies that were  
22 done with respect to particular large merchants?

23 A Sure, which some of those studies actually fueled a lot  
24 of the work in spend that we did in terms of investment. So,  
25 you know, a couple of examples are, I think the number is only

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1 60 percent of our cardmembers in the Pacific Northwest thought  
2 we were accepted at Costco and we were the only credit card  
3 accepted at Costco. And I think it was much lower for  
4 prospects. So it's not just the cardmember behavior, but it's  
5 our issuing business trying to get more cards into consumers'  
6 hands. So the perception of coverage from prospects is low.

7 The other study was at Dunkin' Donuts, where they  
8 started in the northeast area, they started to accept all  
9 plastic. We had point of purchase materials consistent with  
10 the other brands, Visa and MasterCard, in all of the Dunkin'  
11 Donuts -- I think 1100 or 1099 of the 1100 Dunkin' Donuts in  
12 the New England area. And 56 or 65 percent of our cardmembers  
13 didn't think we were accepted there, and the number for  
14 prospects was about 50 percent, and we had equal treatment.

15 So not only getting the coverage, but working on  
16 perceptions of coverage and working with the merchants to  
17 promote the fact that -- promote or show the fact that they  
18 accept American Express is really important.

19 Q To what do you attribute the perception that American  
20 Express was accepted -- or not accepted at these big merchants  
21 who did accept American Express?

22 A It's just years of, you know, working really hard to get  
23 more and more coverage. And so consumers' perception and  
24 years of coverage gaps and suppression and some of those other  
25 elements have impacted both our cardmembers and our prospects.

SHERRY BRYANT, RMR CRR



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1 Q So during the time that you were responsible for US and  
2 then ultimately Global Merchant Services, what types of  
3 initiatives did you undertake or the group undertake at your  
4 direction to try to close this coverage gap?

5 A Well, we -- we invested more in terms of feet on the  
6 street, so our proprietary sales organization going after some  
7 of these holdouts. Had more programs with independent agents.  
8 We implemented OnePoint, which was a program to drive more and  
9 more coverage to small merchants.

10 And then we did things, as I talked earlier, like  
11 Marketing in a Box. We had telesales organizations internal  
12 to American Express and external trying to drive coverage, you  
13 know, more and more acceptance.

14 So a variety of things.

15 Q The government has suggested to the Court in this case  
16 that American Express made the choice not to have full  
17 coverage by deciding to keep its discount rates where they  
18 were. Do you have a reaction to that?

19 A That's not true at all. I mean, I know that as a fact,  
20 which is our objective is to get as much coverage and  
21 ultimately 100 percent coverage, if we could.

22 Q And what role did American Express's pricing to merchants  
23 play in the coverage gap, in your experience?

24 A It played a role. There were other factors that, you  
25 know, we looked at over time. Relevance, meaning especially

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1 small merchants would see one transaction for American Express  
2 versus 20 of Visa/MasterCard. You know, we -- on average, I  
3 think we have about 5 percent of the number of cards in the  
4 marketplace and, on average, probably 7 percent of the  
5 transactions. So if you look at some of the -- even the  
6 larger merchants, we represent 1 or 2 percent of their total  
7 transactions, right. So, you know, acquiring more cardmembers  
8 is really important.

9 Q If price was one of the factors, which I think you just  
10 testified it was, it was one of the factors that went into  
11 coverage issues, why not just lower prices across the board to  
12 at least get rid of that issue?

13 A So A is we've tried all kinds of pricing tests, right,  
14 and none has driven coverage to 100 percent. In fact, there  
15 were some tests we had with zero discount rate, right, and we  
16 didn't get the merchants to accept because of the relevance  
17 that I talked about earlier.

18 THE COURT: Because of the what?

19 THE WITNESS: The relevance, the number of cards and  
20 transactions that they see.

21 THE COURT: Right. So they felt there weren't  
22 enough cards and transactions to justify having -- accepting  
23 the card?

24 THE WITNESS: That is correct. And so relevance  
25 played into it. I also was going to talk about operational

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1 differences, which led to OnePoint, which is because we own  
2 the contract with the merchant, there were things like  
3 reconciliation and settlement that we did differently. We  
4 actually adjusted that to make it more merchant-friendly.

5 A Pricing -- so to answer your question on pricing is, we  
6 can always lower price, right, and lower our price. The  
7 problem is that the discount rate, as I talked about earlier,  
8 fuels both the merchant value proposition in the merchant  
9 organization as well as the card product value, value  
10 proposition. So more rewards, better service, fine hotels and  
11 resorts, all of those programs as well.

12 And so, you know, it's fundamental to our business  
13 model that we align price with value. And what happens is we  
14 lower the discount rate. There's spillover of pricing. We  
15 have less money to invest in rewards and value proposition for  
16 cardmembers and for merchants. So really, it just impacts our  
17 business model.

18 Q And what impact did you think lowering the discount rate  
19 and, thereby, reducing the investments that were available in  
20 the cardmember value propositions you were just describing  
21 would ultimately have upon American Express's coverage levels?

22 A So it would go down. Merchants see fewer cardmembers,  
23 because it's a competitive environment on the cardmember side;  
24 right? And they are trying to power up their value  
25 proposition, better service, more rewards, innovative

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1 programs.

2 And so there are fewer cardmembers, who if the value  
3 proposition isn't right, they spend less and transact at a  
4 lower price, which reduces the value to merchants, and, as I  
5 said earlier, we're constantly negotiating to maintain  
6 acceptance with merchants.

7 So, you know, it's actually the whole business  
8 model.

9 Q If we could take a look back at Defendant's Exhibit 6791.  
10 This is the board presentation we were looking at a bit  
11 earlier.

12 THE COURT: I'm sorry, give me the --

13 MR. ORSINI: Sure, Your Honor. It's Defendant's  
14 Exhibit 6791. And I believe it's --

15 THE COURT: It's in evidence.

16 MR. ORSINI: It is in evidence and I also believe  
17 it's safe for public consumption.

18 THE COURT: Then let the public consume it.

19 MR. ORSINI: We can let the public consume it.

20 Thank you, Your Honor.

21 Q We had been looking at this earlier Mr. Glenn. If you  
22 can take a look now at slide 6, which ends in 5565. And this  
23 was the presentation to the board. Here you're talking about  
24 coverage gap.

25 Down at the bottom of coverage gap, the last main

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1 bullet is "primarily with small merchants, driven by," and  
2 then there are three sub-bullet points.

3 Does this relate to what you had been describing a  
4 few minutes ago?

5 A Yes, it does. Scale and relevance, higher prices,  
6 operational differences.

7 Q And on the scale and relevance point, just to draw that  
8 out a little bit more, if you look at the page ending in 5566.

9 A Yes.

10 Q And that's on the right side a CIF/LIF correlation. What  
11 is -- we've talked a lot about LIF, so we don't need to define  
12 that again. What is CIF?

13 A Cards in force. The number of cards in the market.

14 Q And what's the correlation between those two?

15 A That there is a correlation between having more cards and  
16 higher coverage levels.

17 Q Do you have a sense as to where in the United States  
18 American Express has the highest ratio or the highest  
19 correlation of CIF and LIF?

20 A I believe it's the tri-state area, the New York Metro  
21 area.

22 Q Are you familiar with the term "activation rate"?

23 A I am.

24 Q What does that mean?

25 A So I don't know how it's calculated today, but we

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1 calculate it as an active merchant had one transaction in a  
2 12-month period. So we would consider them active if they  
3 just had --

4 THE COURT: That's active?

5 A Active. One transaction in 12 months, from...

6 Q And have you seen studies of the activation rate in New  
7 York, at least during the time you were responsible for  
8 merchant services?

9 A I have, yes.

10 Q And I don't want to give a specific number, but can you  
11 give me a range within which those activation rates fell, just  
12 percentage levels?

13 A So I believe the New York area has the highest coverage,  
14 in terms of we -- their accepting merchants, but the  
15 activation rate is in the low 70s, I believe, low to mid 70s.

16 Q And if you could look at the last slide I want to talk  
17 about in this deck is 5567.

18 We have displayed a redacted version, Mr. Glenn, so  
19 I'd just ask you not to reference specific numbers since those  
20 are confidential. But can you just describe generally what  
21 this slide here is depicting to the board?

22 A It shows to the board that pricing is not -- just  
23 reducing pricing doesn't close the coverage gap.

24 Q And there's a reference here to under "pricing is a  
25 lever," it says: "Previous pricing pilots have not proven

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1 effective." I think you mentioned that briefly earlier.

2 What type of pilots had American Express run on  
3 pricing issues related to coverage?

4 A Zero discount rate for a period of time. A fixed -- a  
5 fixed rate for a merchant that we would say that your rate  
6 would be lower if X number of transactions came through. So  
7 we've tried all sorts of things with pricing for small  
8 merchants.

9 Q And the last sub-bullet under that section is: "Card  
10 relevance challenges leave some merchants uninterested in  
11 acceptance at any price."

12 Based on your experience, was that something with  
13 which you agreed?

14 A Yes.

15 Q Then the next bullet point says: "Cost to close coverage  
16 gap would offset any upside." And they get to some of the  
17 numbers, so let's not use the numbers, but -- and I'll slow  
18 down. What did that mean?

19 A That if we just moved to, it says -- if we move to parity  
20 coverage and got -- by reducing pricing, it would be extremely  
21 costly. And I don't know if this fully takes in the spillover  
22 effect that's referenced on the right.

23 So this analysis could have been just to get those  
24 merchants to accept. Again, I never thought we could get 100  
25 percent acceptance anyway, because of the other factors,

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1 right, but it would cost a significant amount of moneys and  
2 result in spillover pricing as well.

3 Q One last document on this topic, if we could look at  
4 Plaintiff's Exhibit 1611.

5 MR. ORSINI: Your Honor, this document is both in  
6 evidence and safe for the public screen.

7 A I'm sorry?

8 Q It's Plaintiff's Exhibit 1611 and there's a presentation  
9 attached to this e-mail that references Project Odyssey. Just  
10 remind us what that project was?

11 A I think Odyssey was the pilot for -- that became  
12 OnePoint.

13 Q Take a look at the slide ending in 1317. This was the  
14 project and pilot that Tom Pojero was leading; correct?

15 A Yes.

16 Q Down at the bottom where it says "role of the network,"  
17 there's a bullet point that says: "Reality is that we are a  
18 premium network with a very large merchant DR premium." I  
19 presume that means discount rate?

20 A Yes.

21 Q "Very different situation than Discover. Our goal is to  
22 find the right balance of DR and coverage."

23 So can you explain what that means?

24 A Sure. It's essentially what I just described, right,  
25 which is the -- our discount rate funds the moneys that we put



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1 into an organization, the value proposition from both the  
2 merchant side and the card side. And without that value  
3 proposition, we lose cardmembers and we're going to lose  
4 merchants.

5 So maintaining a premium discount rate and having  
6 a -- having that rate reflect the value that we're delivering  
7 is very, very important. Without it, our model falls apart.  
8 We won't have -- lowering the rate lowers our ability to  
9 invest in the business, both on the merchant side and the  
10 cardmember side. That lowers probably the number of  
11 cardmembers we have and absolutely the money we can spend on  
12 rewards and value proposition for those cardmembers.

13 MR. ORSINI: I was going to move on to another  
14 topic.

15 THE COURT: Let's take a ten-minute break. Please  
16 don't discuss your testimony with anyone.

17 (Recess.)

18 (Continued on the next page.)  
19  
20  
21  
22  
23  
24  
25

*Glenn - direct - Orsini*

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1 THE COURT: Please be seated, everyone.

2 Mr. Chesler, is everything all right?

3 MR. CHESLER: Yes, Your Honor. Sorry. Yes, Your  
4 Honor.

5 THE COURT: You just seem preoccupied.

6 MR. CHESLER: No, no. I was dealing with a problem  
7 unrelated to this. I'm sorry, Your Honor.

8 THE COURT: Oh, no, that's all right, I'm just  
9 checking.

10 MR. CHESLER: Thank you.

11 THE COURT: Go ahead, Mr. Orsini.

12 MR. ORSINI: Thank you, Your Honor.

13 DIRECT EXAMINATION (Cont'd.)

14 BY MR. ORSINI:

15 Q New topic, Walgreens.

16 You were involved in discussions with Walgreens in  
17 about 2004 and 2005, correct?

18 A Yes.

19 Q And what, generally, do you recall about the Walgreens  
20 situation?

21 A Walgreens had threatened to cancel and actually had  
22 cancelled card acceptance.

23 Q When were you brought into the discussions, I don't need  
24 a specific date, I just mean generally at what stage of the  
25 process were you brought in?

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1 A Well, I was advised I think fairly early on when it  
2 became apparent to our team that they had an intent to cancel  
3 and then got more involved over a couple of months.

4 Q Now, at that time, around fall of 2004, your  
5 responsibilities were all merchants in the U.S. and Canada?

6 A Yes.

7 Q Why were you brought into the Walgreens situation  
8 particularly?

9 A Well, because my team had responsibility for the  
10 Walgreens relationship.

11 Q And what was your reaction when you heard that Walgreens  
12 was threatening to cancel?

13 A Very, very concerned.

14 Q Why?

15 A A very large merchant which is really, really important  
16 not just for our spend but for perceptions of our cardmembers  
17 and, you know, a very large merchant, we worked really hard to  
18 not only acquire them but also to renew them and strengthen  
19 the relationship.

20 Q When you were brought into the conversations around  
21 Walgreens, what was your view as to whether or not they might  
22 in fact follow through on their cancellation threat?

23 A Well, because of the discussions we had at senior level  
24 and eventually, you know, they sent us a termination  
25 cancellation notice and then went public with it, I was

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1 concerned from the outset because we're constantly in  
2 negotiations with merchants, right, and talking about the rate  
3 but cancellation threats are really, really critical for  
4 our -- are important to us.

5 Q What was your personal involvement in the Walgreens  
6 situation?

7 A So, involved with our team in terms of the negotiations,  
8 looking at the proposals we were making. I had a conversation  
9 or two with their CFO and our folks I think and also engaged  
10 in quite a few conversations and faxes or letters to their  
11 CEO.

12 Q The CEO, that Jeff Rein?

13 A Yes.

14 Q And CFO, was that a gentleman by the name of Bill  
15 Rudolphsen?

16 A I think he was the CFO.

17 Q I'd like you to take a look, if you could, in your binder  
18 at Plaintiff's Exhibit 1974.

19 MR. ORSINI: Your Honor, this one is in evidence  
20 already. It also contains confidential information.

21 Q So, the cover of this looks like a fax cover sheet from a  
22 woman named Sandra to Mr. Rein; do you know who Sandra was?

23 A Sandra Sanchez was my assistant at the time.

24 Q Okay. And if you flip to the next page, there's an  
25 actual letter there. Was this a letter that you sent to

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1 Mr. Rein?

2 A Yes.

3 Q Or had sent to Mr. Rein?

4 A Yes.

5 Q And so, just starting at the top, you say: "I look  
6 forward to our conversation that would allow us to focus on  
7 the following key items we had previously discussed over the  
8 past few weeks, these are as follows:

9 The first bullet point talks about harnessing  
10 marketing and information that could drive incremental top  
11 line sales.

12 Can you explain what you were meaning to convey to  
13 Mr. Rein by that bullet point?

14 A Sure. Using our marketing team and our marketing  
15 capabilities and the information that we have to drive more  
16 value in -- from our cardmembers to them and also resulting  
17 in, you know, a benefit for Walgreens, value to Walgreens.

18 Q And the next bullet point talks about providing Walgreens  
19 with opportunities to build additional revenue streams and  
20 reduce a portion of your discount rate cost structure with an  
21 aggressive card acquisition partnership program.

22 Let's break that up a little bit. An aggressive  
23 card acquisition partnership program, what was that?

24 A This was something we talked about earlier, right, which  
25 is programs that we could run with merchants to provide

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1 revenue for them. So, in this case it was a card  
2 acquisition -- Walgreens acquiring cards on behalf of American  
3 Express and getting reimbursed for that.

4 Q You state in this bullet point that that could reduce a  
5 portion of Walgreens discount rate cost structure.

6 Can you explain what the relationship is between a  
7 card acquisition partnership program and a discount rate paid  
8 by the merchant?

9 A Sure. We talked about this earlier. It is part of the  
10 net effective rate. Essentially discount rate is the headline  
11 rate, right, and the amount they pay for the relationship and  
12 acceptance, because it all starts with having the acceptance  
13 relationship, would decrease their net effective rate, their  
14 headline rate, their headline discount rate.

15 Q What is the next bullet point about leveraging loyalty  
16 and rewards expertise referring to?

17 A I believe it has to do with our card folks in terms of  
18 what they do in terms of loyalty and build loyalty and a  
19 rewards program and a lot of people think that we have, and I  
20 do, we have an industry leading rewards program, the expertise  
21 there. So, this is about capitalizing, having Walgreens  
22 capitalizing on our expertise there to drive, you know,  
23 loyalty and advise them on, if they want, advice on how they  
24 could further drive loyalty.

25 Q And is that something that American Express will from

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1 time to time advise merchants on?

2 A Yes, we -- so, you know, we have teams not only on the  
3 loyalty side and do benchmarking and talk to the merchants  
4 about, but also, you know, on the merchant side as well in the  
5 analytics and information management.

6 Q The final bullet point mentions payment choice; what were  
7 you referring to there?

8 A So, that continuing -- I obviously wanted them not to  
9 cancel and continue to accept so they would provide choice of  
10 payments, consumers could have their choice of using the card  
11 of choice that they want at Walgreens.

12 Q Okay. Now, if we go further down in here, there's a  
13 paragraph beginning Jeffrey.

14 A Yes.

15 Q It says: Jeffrey -- I won't read the whole thing but it  
16 goes on to talk about extending the partnership for an  
17 additional, let's not say the number I guess -- an additional  
18 period of months?

19 A Right.

20 Q Why were you proposing an extension for that time period  
21 reflected in this document?

22 A So, you know, our conversations had been with their teams  
23 for quite some time about the value we provide, right, and  
24 they wanted a lower rate and we had made I think at this point  
25 in time probably a couple of revised offers for a contract and

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1 it was apparent to me that they didn't think we were  
2 delivering the value that they wanted us to deliver and so  
3 what I was saying is for a period of time just give me the  
4 opportunity, give our teams the opportunity to come in and  
5 prove that value with some of the things we talked about  
6 earlier, those three or four bullet points above, which is  
7 information, expertise, marketing programs.

8 Q You say later a little further down, actually the next  
9 paragraph --

10 A Yes.

11 Q -- that were you willing to provide cash payment of a  
12 certain amount of money in exchange for that period extension.  
13 What would have happened -- well, first of all, did they  
14 accept this offer?

15 A They didn't.

16 Q Had they accepted the offer and had decided after some  
17 period of time that they didn't want to continue accepting  
18 American Express, what would have happened to that money?

19 A They would have kept it.

20 Q Okay. You go on to say: "I will personally commit the  
21 appropriate resources and marketing funds that I assure you  
22 will make an impact in the marketplace."

23 What were you trying to convey at that point?

24 A That he had my commitment and the organization's  
25 commitment to work really, really hard on proving our value.



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1 Q So, what did you have in mind, what do you mean by work  
2 very hard to prove value; what did you think you were going to  
3 do with Walgreens during this period of time, had they agreed  
4 it, to prove this value?

5 A There was distribution -- the things that we had put on  
6 the table in terms of marketing programs, card distribution  
7 programs, having our card folks come in and talk to them  
8 about, you know, loyalty programs and so, commitment of our  
9 organization also to prove the value that I believed that we  
10 had and could deliver further.

11 Q Were you offering this amount of money for that period of  
12 time to in essence buy time to allow American Express to get  
13 in place the mechanisms it needed to shift its cardmembers  
14 elsewhere if Walgreens followed through?

15 A No, not at all. It was all about negotiating with  
16 Walgreens to continue acceptance.

17 Q So, if you turn to the last page of this document,  
18 there's a slide there, it's on page 5322.

19 A Yes.

20 Q The top mentions a Blue Cash Card acquisition  
21 partnership. The Blue Cash Card, what was that?

22 A It's one of our products, products of American Express.

23 Q A credit card?

24 A Credit card, yes.

25 Q It's called Cash because it had a cash back feature to

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1 it?

2 A Yes, cash back to the consumer.

3 Q And so, generally, what were you proposing to Walgreens  
4 with respect to the Blue Cash Card?

5 A Well --

6 Q Let's not use numbers, we'll walk through the bullet  
7 points. Just generally, what was the idea here?

8 A Concessions on discount rate, a program where for every  
9 card they acquired there was some dollar bounty that went back  
10 to Walgreens, a funded gift certificate from Walgreens for  
11 every card account that they acquired, for every card they  
12 acquired.

13 Q So, if Walgreens had agreed to do this partnership, what  
14 would they have been doing for American Express?

15 A They would have acquired more merchants -- I'm sorry,  
16 they would have acquired more cardmembers for us, right, and  
17 that's a value to us and they would have received a revenue  
18 stream for that.

19 Q So, if you look at the first bullet point, it references  
20 a discount rate; that's the rate they would pay had they done  
21 this partnership for every one of these Blue Cash cards that  
22 they helped Amex acquire?

23 A Right, that's correct.

24 Q And the next bullet point refers to per-Card bounty  
25 payments; what are those?

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1 A So, in addition to that, right, they would have received  
2 that range of payment for every card they acquired.

3 Q Okay. That's actual -- that's cash payments, that's cash  
4 money?

5 A Yes.

6 Q The next bullet point references: AXP-funded gift  
7 certificates; what is that?

8 A So, it would be a Walgreens gift certificate for a  
9 discount on anything the consumer used.

10 Q And that's something Amex would have funded that could  
11 have then been used to buy products from Walgreens?

12 A That's correct, with any form of payment.

13 Q Now, this Blue Cash Card acquisition partnership, has  
14 American Express done partnerships like this over time?

15 A We have.

16 Q And in your experience dealing with those, how do the  
17 terms that are reflected in this document that was proposed to  
18 Walgreens compare with the terms that were offered to other  
19 merchants?

20 A I think this is a pretty rich offer.

21 Q By rich, you mean rich for whom?

22 A For the value to Walgreens in terms of revenue.

23 Q The next section of this slide refers to a Gift Card  
24 Distribution Partnership. Is this similar except now they're  
25 distributing gift cards instead of Blue cards?

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1 A Yes.

2 Q And the first bullet point there's -- again we have to  
3 stay away from the numbers, but there's an estimated year one  
4 revenue number and it references commission payments; what are  
5 those commission payments?

6 A Similar to the bounty payments that I think is on the one  
7 above which is payments made to Walgreens for selling each --  
8 per card sale.

9 Q And these were real dollars that would be paid per card?

10 A Correct.

11 Q Okay. Did they accept this offer?

12 A They -- the offer made on that date, no.

13 Q Yes. Okay. Take a look at PX 1969, also in your binder.

14 MR. ORSINI: Again, Your Honor, this document is in  
15 evidence already and is confidential.

16 Q So, this is roughly a month later -- no, not a month, a  
17 couple of weeks later.

18 This is to Mr. Rein from Ms. Sanchez again; do you  
19 recall having this letter sent to Mr. Rein?

20 A I do.

21 Q Okay. If we could look at the second page of the letter,  
22 that page right there, actually down towards the bottom there  
23 are some proposed terms. Now, the first one is term, and that  
24 refers to the period for the agreement, correct?

25 A It does, yes.

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1 Q Which is longer than the prior offer?

2 A It is, yes.

3 Q And why did the term of the agreement change from the  
4 last proposal to this one?

5 A You know, subsequent discussions with Mr. Rein in terms  
6 of he didn't accept the last proposal, right, we had  
7 discussions and I was trying to address all of the needs that  
8 he talked about, so one was a longer term.

9 Q And the next line is a payment and there's a dollar  
10 figure there; what does that reflect?

11 A It's a payment made directly to Walgreens.

12 Q Signing bonus?

13 A Yes.

14 Q So, that's actual cash?

15 A Yes.

16 Q And had they accepted that term, how would that payment  
17 have affected their net effective rate?

18 A It would have been a significant decrease in their -- you  
19 would take that over the volume.

20 Q We can do the math but we'd have to use the numbers,  
21 okay, so we'll move on.

22 The marketing impact, the next line, what is that a  
23 reference to?

24 A That's not a cash payment, that would be the impact and  
25 value of the marketing programs to Walgreens as we calculate

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1 them.

2 Q So, that number is a prediction that if you do the  
3 marketing, you could deliver that?

4 A Yes.

5 Q Now, the next line references discount rates. Was this a  
6 new discount rate that was being offered to Walgreens as  
7 compared to what they had been paying previously?

8 A Yes.

9 THE COURT: At a higher band?

10 THE DEFENDANT: Yes, Your Honor, at a higher band.

11 THE COURT: My recollection is from previous  
12 testimony that they had not reached that higher spend on the  
13 card at that point; is that right?

14 THE WITNESS: I believe that's true, yes, sir.

15 Q And this higher band, that was a band that had existed in  
16 the discount rate table prior to these negotiations?

17 A No, we established new bands.

18 Q So, if they grew to that band, they would get the  
19 discount rate benefit they would not have received under the  
20 old deal, correct?

21 A Correct.

22 THE COURT: I see.

23 MR. ORSINI: That's the point.

24 Q Then in the next sentence there's a reference to gift  
25 card and Blue distribution agreements representing a certain

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1 amount of additional revenue. Those are the agreements we had  
2 just talked about in the prior document?

3 A Yes, they are.

4 Q And unlike the marketing impact figure, some of this at  
5 least reflected real payments directly to Walgreens contingent  
6 upon how many cards they distributed, right?

7 A Correct.

8 Q Did they accept this offer?

9 A They didn't.

10 Q What did they do instead?

11 A They announced their intention to cancel and I believe  
12 that -- so, it was now publicly, I don't remember if they sent  
13 us a letter before they announced publicly but they announced  
14 that they were going to cancel about a month later in January.

15 Q So, let's look at this document that is dated December  
16 13th. Let's look at Defendant's Exhibit 2219.

17 MR. ORSINI: Your Honor, this one we could put on  
18 the public screen, and this is also in evidence already.

19 Q And do you recall seeing this release?

20 A I do.

21 Q What was your reaction when you saw this?

22 A Well, again I don't remember if I heard about it before,  
23 but very concerned obviously, I mean it's a public  
24 announcement about a large merchant cancelling, not  
25 threatening to cancel but actually cancelling card acceptance

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1 a month later.

2 Q Why did the fact that it was public concern you?

3 A Well, you know, we talked about how hard we work to  
4 acquire customers and retain customers and we talked about  
5 spillover effect and so it concerned me for a couple of  
6 reasons, one is our cardmembers being able to use their card  
7 at a big, very big brand, a national brand, and the other is  
8 that once it's public, and we had these private negotiations,  
9 then I was very concerned about the potential of, you know,  
10 spillover pricing and, you know, I wanted to work to keep them  
11 accepting the card and once they made this announcement, so  
12 other large customers would say, well, if they didn't cancel,  
13 what programs did you give Walgreens.

14 So, it was concerning because it's a big customer,  
15 spend, we know that big customers and having acceptance there  
16 impacts our cardmembers' behavior and their perceptions of  
17 coverage, and the fact that they went public with it.

18 Q What other public steps do you recall Walgreens taking  
19 with respect to their intended cancellation?

20 A They put up signs in the stores in addition to this.

21 Q Can you look at Defendant's Exhibit 7725.

22 And what does this reflect?

23 A It's -- I don't recall the newspaper but it's an article  
24 about merchant becomes latest merchant to quit taking cards,  
25 so cancelling acceptance.



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1 Q Now, if you could just look at the picture itself, what  
2 is that a picture of?

3 A A sign in a Walgreens store, it says the effective date  
4 is January 1st but the announcement was January 14th, I think  
5 we just looked at.

6 Q And do you recall that in fact Walgreens was posting  
7 signs like this?

8 A Yes.

9 MR. ORSINI: Your Honor, I offer this exhibit into  
10 evidence purely to show the statement was made, not for the  
11 truth of any of the statements in the article.

12 THE COURT: It looks like a USA Today photograph.

13 MR. ORSINI: That's right, Your Honor.

14 THE COURT: Was it in USA Today?

15 THE WITNESS: I actually don't recall.

16 THE COURT: You don't remember?

17 THE WITNESS: No.

18 MR. ORSINI: I believe it says USA Today right  
19 underneath the picture.

20 THE COURT: Yes, that's why --

21 MR. ORSINI: I thought you just recognized their  
22 font.

23 THE COURT: I sleep with it under my pillow.

24 MR. ORSINI: Next to the Durbin Amendment.

25 THE COURT: Yes, sir.

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1 MR. HAMER: We'll notice an incomplete copy of the  
2 article.

3 THE COURT: I know. I'm sure we could find it if we  
4 really looked for it, we meaning you.

5 MR. ORSINI: I'd be happy to find the full copy and  
6 replace the exhibit with a full copy.

7 THE COURT: Why don't you do that.

8 MR. HAMER: With that understanding, no objection.

9 THE COURT: Very well. 2219?

10 MR. ORSINI: No, that was Defendant's Exhibit 7725.

11 THE COURT: 7725?

12 MR. ORSINI: Yes.

13 THE COURT: All right.

14 MR. ORSINI: 2219 was already in evidence.

15 THE COURT: Got it. All right. 7725 is received in  
16 evidence subject to that stipulation.

17 (Defendant's Exhibit 7725 so marked in evidence.)

18 Q Now, when Walgreens made the public announcement that it  
19 was going to cancel American Express acceptance, did American  
20 Express take any steps with respect to its own cardmembers and  
21 their shopping at Walgreens?

22 A Yes, we did.

23 Q Okay. And what, generally, did American Express do after  
24 this public announcement?

25 A Well, I don't remember the timing but throughout I'd even

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1 told, you know, Mr. Rein in my conversations with him that,  
2 you know, we want you to continue to accept, our cardmembers  
3 like shopping at Walgreens, it is really important to us that  
4 we protect our cardmembers as well. So, some of the steps we  
5 took were to plan some marketing programs that if our  
6 cardmembers couldn't use their card at Walgreens, they would  
7 use it at other places.

8 Q And why was American Express planning for those programs?

9 A Because Walgreens was going to cancel and that once they  
10 cancelled acceptance, we wanted to protect our cardmembers and  
11 their spend as well as, you know, the merchant network. As I  
12 talked earlier on, you know, not just small merchants, losing  
13 a large merchant in terms of the impact on spend and  
14 perceptions of the coverage is really -- it's a problem for  
15 us, it is really concerning for us.

16 Q Do you recall whether any of those marketing programs  
17 actually were launched?

18 A I don't think we launched any of the marketing programs.

19 Q Do you recall any steps American Express took with  
20 respect to its call centers if people were to call in about  
21 the Walgreens announcement?

22 A Yes, we told the folks in our call centers that if they  
23 called to ask questions or to complain, we told them I believe  
24 where they could go and use their card at other stores nearby  
25 or other, you know, drug stores or drug chains or competitors,

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1 as well as told them that they should voice their concerns to  
2 Walgreens.

3 Q And why was American Express preparing the call centers  
4 for those messages?

5 A Well, we were preparing because we knew the calls would  
6 come in and, you know, as I talked to earlier, the value  
7 recapture, we wanted to make sure that all of the folks that  
8 touch our customers and our merchants and our cardmembers,  
9 they're prepared for questions that would come up.

10 Q Do you recall any steps that were considered with respect  
11 to American Express employees and their filling of  
12 prescriptions at Walgreens?

13 A Yeah, we had our benefits folks look at if they could no  
14 longer fill their subscriptions -- prescriptions at Walgreens,  
15 where else they could go.

16 Q And why did you consider that step?

17 A Well, just like protecting our cardmembers, we wanted to  
18 do the same thing with our employees and employees have a  
19 share in the company and we wanted our employees to use their  
20 card where they can use their card and to frequent merchants  
21 that accept us.

22 Q Now, if we look at Plaintiff's Exhibit 1972.

23 MR. ORSINI: Your Honor, this one is confidential,  
24 it's in evidence.

25 A I'm sorry, what --

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1 Q Plaintiff's Exhibit 1972. Is this another letter that  
2 you sent to Mr. Rein?

3 A It is, yes.

4 Q What was the purpose of sending this letter?

5 A Well, we had a conversation, as you see, the day before I  
6 guess, January 12, they were scheduled to cancel acceptance on  
7 January 14th, and I continued even after the public  
8 announcement to talk with him and communicate with him and put  
9 other offers on the table.

10 Q Now, if you look at the next page, I think it's the next  
11 page, yes, down towards the bottom, there's another offer that  
12 you're making to Mr. Rein. This is another longer term than  
13 the previous one we had seen. What was the reason for the  
14 longer term?

15 A Well, it was responding to all the discussions we were  
16 having, I was putting on the table things that he continued to  
17 talk to me about, right, rate certainty over a period of time  
18 and so, you know, I'm trying to get them not to cancel and so  
19 that's what the proposal represents.

20 Q And down below under payment it references a number per  
21 year in return for gift card distribution agreement; what  
22 would that payment be, what does that reflect?

23 A That was, I believe it was [REDACTED] -- it was a payment per  
24 year for the term of the agreement in terms of entering into a  
25 distribution agreement.

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1 Q Is that equivalent to sort of a signing bonus for the  
2 distribution agreement that would renew every year?

3 A Yes, it was a payment made to them.

4 Q How does that relate to the other bounties and things we  
5 had seen earlier in the gift card distribution agreement?

6 A In addition to those other payments we talked about.

7 Q Now, there's reference in here earlier in the letter, as  
8 you said, to the fact that you were going to speak with  
9 Mr. Rein that same day. Do you recall whether you spoke to  
10 him that day?

11 A I did.

12 Q And why did you want to speak to him?

13 A I wanted him to -- I wanted to make sure we had a chance  
14 to get back together after I sent him the note.

15 Q Did that conversation in fact occur?

16 A It did.

17 Q And after you had that call with Mr. Rein, what did you  
18 do?

19 A I called Ken Chenault and Dave House.

20 Q Why?

21 A Because Mr. Rein told me that he was cancelling tomorrow  
22 and -- or on the 14th at midnight and I wanted to make Ken and  
23 Dave aware that they were cancelling.

24 Q Why did you think you had to call Ken and Dave House?

25 A It was really important, I mean, you know, from the start

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1 I had kept them abreast of what was happening. This was a  
2 big -- it was a big deal for us, I mean a major customer  
3 cancelling impacts our business model, impacts perceptions of  
4 coverage, all the things we talked about, and this was  
5 important to us.

6 Q Did you speak to Mr. Rein again after that?

7 A I did.

8 Q When did you speak to him?

9 A Early Friday morning, so I -- he had told me in one of  
10 the prior conversations that he gets into the office really  
11 early and I don't know if I called him at seven a.m. eastern  
12 time or, but I reached him pretty early because I knew he got  
13 into the office.

14 Q Why did you call him that morning?

15 A Because I didn't want him to cancel or continue  
16 cancelling, I think they had cancelled card acceptance at  
17 midnight, and so it was a continued effort to get him to --  
18 get to some kind of an agreement.

19 Q Were you prepared to make additional offers on that  
20 call?

21 A I was and subsequently there was a further concession or  
22 more negotiations.

23 Q Fair to say that throughout this period Walgreens wanted  
24 a lower discount rate, right?

25 A Yes.

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1 Q And American Express, we talked about the new band on the  
2 table earlier, but American Express made offers of various  
3 other types with respect to the overall economic relationship,  
4 right?

5 A Yes.

6 Q If they just wanted a lower discount rate, why didn't  
7 American Express give them the lower rate as opposed to the  
8 other offers in other ways to deliver the money to Walgreens  
9 that were made?

10 A So, we know, we talked on that earlier, about spillover  
11 impact and pricing and they're a big visible customer and so  
12 pricing integrity is important to us but we put these programs  
13 on the table and put another rate band so that (A) it would  
14 lower their net effective rate, right, give them rate  
15 certainty, and also the opportunity to lower their rate  
16 through growing the business.

17 Q Now, when you called Mr. Rein that Friday morning, what  
18 did you say to him?

19 A Well, I don't remember exactly what I told him but, you  
20 know, one of the things that I had stressed all along is that  
21 I said something about, yes, this is financials, it is also  
22 about customer service, and I remember saying that I don't  
23 understand why you would want to risk losing one customer and  
24 we can provide benefits to you and value to you.

25 Q And what was your view of the overall outcome of all of



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1 the Walgreens negotiations?

2 A Well, we -- they reinstated acceptance, participated in  
3 some of the programs that we talked about and it was -- I  
4 think it was consistent with some of the negotiations that we  
5 have with merchants, you know, all the time about lowering the  
6 rate. This was just very, very visible, a very, very big  
7 customer impacting our business.

8 Q Okay. One last topic, Mr. Glenn. You're familiar with  
9 the American Express non-discrimination provisions that are at  
10 issue in this case?

11 A I am.

12 Q Generally speaking, from your perspective, why does  
13 American Express have non-discrimination provisions?

14 A Because we know that discouraging people from using the  
15 card at point of sale has an impact on cardmember behavior and  
16 spend and the economics of the business.

17 Q If you could take a look at Defendant's Exhibit 4184.

18 MR. ORSINI: Your Honor, this one is also in  
19 evidence. It is also confidential.

20 Q Do you have that, Mr. Glenn?

21 A Yes.

22 Q This is entitled: Perceptions of Coverage, Analytical  
23 Findings and Emerging Global Strategy, Interim Review With  
24 Bill Glenn.

25 Would you from time to time get updates on

*Glenn - direct - Orsini*

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1 perceptions of coverage issues?

2 A Yes.

3 Q Why?

4 A Well, as I talked earlier, this is not a business unit  
5 review, right, but for key initiatives that we were investing  
6 in that was very important to the business model, we had  
7 periodic reviews to make sure the teams -- I agreed with the  
8 direction they were taking and had the resources and didn't  
9 have any requests, that would help us do the job better.

10 Q Now, if we could take a look at slide 5855, it's page 20.  
11 This slide is about Carrefour.

12 What is Carrefour?

13 A A large retailer.

14 Q Where?

15 A Principally in Europe.

16 Q Okay. What type of retailer?

17 A A big box retailer so -- I don't know exactly what lines  
18 they have and don't have but a major retailer.

19 Q The title of this slide is: New Signings Spillover GMS  
20 Pricing.

21 You've talked a lot about spillover today. In this  
22 context, what does spillover mean?

23 A This is spillover spend, so, and essentially that  
24 means -- I know when we sign a large brand and we employ our  
25 marketing with that particular brand, it impacts cardmembers'

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1 perceptions of coverage and the ability to use the card in  
2 that industry and other industries and so, it increases, you  
3 know, overall spend.

4 Q And can spend spillover work the other way, if you were  
5 to lose a merchant, what would the spend spillover be of  
6 that?

7 A No, that impacts coverage and then perceptions of  
8 coverage and utility of the card and overall spend.

9 Q And as general matter, what was the result of this  
10 Carrefour announcement -- let me step back for a second.

11 Was Carrefour a merchant that accepted American  
12 Express?

13 A Previously, no.

14 Q And then American Express signed it?

15 A Signed it, yes.

16 Q And what was the analysis that was conducted based upon  
17 the signing of Carrefour?

18 A Well, we wanted to look at post-signing, right, not only  
19 to look at it, at Carrefour itself, but what impact it had on  
20 cardmember behavior in that industry and other industries.

21 Q And what was the result of that analysis?

22 A That when we sign a customer and market with that  
23 customer through our distribution channels and make our  
24 cardmembers aware of the spend, that it increases spend in  
25 that category and other categories.

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1 Q If you could turn to I believe it's the next page -- yes,  
2 it's the next page, 5856, this is a slide entitled: New  
3 Signing Spillover Effects GMS US Insights.

4 Can you just describe generally -- first of all,  
5 what type of spillover effect are we talking about here, is  
6 this pricing or spend?

7 A This is spend spillover.

8 Q Okay. And what does this analysis demonstrate?

9 A That the spillover -- there's a greater spillover spend  
10 when you sign and work with large brands.

11 Q And there's a reference here to larger merchants in EDS  
12 generating the biggest impact; what does that mean?

13 A It is that as we're increasing coverage, especially in  
14 everyday spend categories, right, that it has an impact on  
15 overall spend.

16 Q Now, when you were in charge of Global Merchant Services,  
17 as well as prior to that when you were in charge of the United  
18 States and Canada, how did this type of spend spillover  
19 analysis factor into your decision making process around  
20 negotiations with large merchants?

21 A Well, it had a lot to do with it, again, how much  
22 marketing we were going to put against that particular  
23 merchant, what kind of agreement we would make and so, while I  
24 talked about pricing integrity and the discount rate table, it  
25 also spoke to us about the benefit of signing larger iconic

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1 brands, if you will, or bigger brands and pouring marketing  
2 resources and analytics into the relationship and long-term  
3 commitments, all the things that go into a contract, because  
4 it has a spillover effect on our cardmember behavior and on  
5 signing more merchants as well.

6 Q How does it have a spillover effect on signing more  
7 merchants?

8 A More merchants see more merchants accepting, right, and  
9 that leads to greater spend which leads to greater value for  
10 the merchants.

11 Q Can this work in the other way as well?

12 A It does.

13 Q And how?

14 A Well, we have -- if merchants cancel or attrite, if they  
15 suppress, it has an impact on other merchants and on our  
16 cardmembers' behavior.

17 Q You just used the term "suppress," what does suppress  
18 mean?

19 A Suppression is -- there are principally two forms of  
20 suppression. One is active suppression, when you walk into a  
21 location, they say -- and you take out your American Express  
22 Card and they say, we'd rather you use another form of  
23 payment, or my terminal is broken, it is not working for  
24 American Express, and then there's another form of suppression  
25 where there's point of purchase material on the door or in the

*Glenn - direct - Orsini*

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1 store and it doesn't include American Express, it has the  
2 other brands.

3 Q There have been a couple of different words used in this,  
4 court depending on who is using them; there's discrimination  
5 or steering. Is suppression the same thing as discrimination  
6 and steering in your mind?

7 A Yeah.

8 Q Or a form of?

9 A It is.

10 Q I want to make sure we're talking about the same thing.

11 What relationship does suppression have to  
12 perceptions of coverage?

13 A So, if you're asked by a location to use another form of  
14 payment, we know that impacts cardmembers' use of the card in  
15 other similar industries, they may get treated the same way,  
16 or there may not be coverage in those particular locations and  
17 so it has a real impact on our cardmember behavior.

18 Q You talked about point of purchase materials or POP or  
19 P O P, right?

20 A Yes.

21 Q And what's POP or P O P?

22 A P O P, point of purchase materials, so the decals, the  
23 most prevalent form is in decals you see on the door of  
24 retailers or merchants.

25 Q These are the stickers that indicate what's accepted?

*Glenn - direct - Orsini*

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1 A Yes.

2 Q And under American Express's non-discrimination  
3 provisions, what are merchants required to do with respect to  
4 POP?

5 A Equal treatment for all the brands they accept.

6 Q And what do you mean by equal treatment?

7 A So, the decals are stripped, so they have to -- Visa,  
8 MasterCard, Discover, if we're accepted, we have to have  
9 the same sort of treatment size decal that the other brands  
10 do.

11 Q Do they have to display it if they don't display the  
12 others?

13 A Do they have to -- I'm sorry?

14 Q Do they have to display American Express POP if they're  
15 not displaying any other POP?

16 A No.

17 Q You referenced a strip. What do you mean by a strip as  
18 opposed to POP?

19 A Most of the decals are strips with all the brands on  
20 them.

21 Q How does American Express go about providing POP to  
22 merchants?

23 A So, we distribute these through our third-parties and  
24 mailing and different distribution channels. We've tried  
25 online, so merchants can go online and get tools and POP

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1 materials from a site as well.

2 Q So, in this same presentation, if you could turn to slide  
3 with Bates ending 5868.

4 Do you have that, Mr. Glenn?

5 A Yes.

6 Q In the middle there's a reference to POP being the  
7 networks most visible and consistent, ATL communication and is  
8 highly correlated with CM's POC.

9 What is ATL?

10 A Above the line advertising.

11 Q And POC is perceptions of coverage?

12 A Yes.

13 Q Right below that there is a reference to iconic POP, I  
14 believe you mentioned it earlier in your testimony; what is  
15 the iconic POP?

16 A What we did is, again trying to drive value in the local  
17 community and to local merchants who, you know, who feel a  
18 part of the community, we engaged local artists in different  
19 markets across the country to produce point of purchase  
20 materials. So, in San Francisco it could be the Golden Gate  
21 Bridge, and in different markets different things that are  
22 important or visible or people feel proud about in terms of  
23 their town or their marketing community.

24 Q The Court had asked some questions last week about what  
25 American Express does particularly in the small merchant base



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1 to monitor steering or discrimination and to take action about  
2 steering and discrimination, so I'd like to focus on that for  
3 the next few minutes, Mr. Glenn.

4 As a general matter, when you were responsible for  
5 Merchant Services, did American Express take steps to monitor  
6 whether merchants, we'll start with all merchants, were  
7 engaged in conduct that violated the non-discrimination  
8 provisions?

9 A Yes, we did. We did before I arrived and after I arrived  
10 as well, so it is continually.

11 Q Okay. We'll talk about large merchants first and then  
12 we'll go to small merchants.

13 With large merchants, what were the processes in  
14 place to analyze whether the merchants were honoring their  
15 non-discrimination provisions?

16 A Well, you know, we had client managers attached to,  
17 assigned to those particular merchants and part of that were,  
18 you know, store checks and to see, it is much more visible.  
19 Our cardmembers, you know, would call in as well. But we had  
20 people assigned to those particular merchants and so those  
21 always came up in discussions as well.

22 Q So, you said store visits, that would be the client  
23 manager visiting the large merchant store?

24 A Or people we have doing, you know, in the marketplace and  
25 even our acquisition folks were in the marketplace as well,

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1 right, so they would report back.

2 Q And when American Express identified a situation where a  
3 merchant was engaged in conduct that violated the  
4 non-discrimination provisions in the large merchant base, how  
5 would American Express deal with that?

6 A Our client manager who had a relationship at headquarters  
7 who negotiates the contracts and talks to them day-to-day  
8 about marketing programs or provisions or operational issues  
9 would raise it with those merchants.

10 Q It would be resolved through those conversations?

11 A Yes.

12 Q Quickly before we talk about the small merchants,  
13 there was some testimony earlier in this trial I think when  
14 Mr. Pojero was here and some documents that reflected policy  
15 that Bill Glenn had with respect to not signing up a merchant  
16 acquisition target who at that time was engaged in forms of  
17 conduct that violated the non-discrimination provisions; was  
18 that in fact your policy?

19 A Certainly. We weren't going to sign someone who actually  
20 talked to us about they were going to violate, you know, the  
21 contract when we signed it. So, yeah, it was a policy, just  
22 like it was a policy to work with a merchant and try not to  
23 have them suppress after they were accepting. But ultimately,  
24 as difficult as it is, we'd rather someone non-accept than  
25 suppress and steer.

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1 Q Why is that?

2 A Because we -- you know, over the years all the research  
3 tells us that when our cardmembers are discriminated at point  
4 of sale, that it affects their spend behavior not only at that  
5 particular merchant but outside that particular merchant as  
6 well and over time it, you know, it affects the cardmembers'  
7 perceptions of coverage, where they can use the card.

8 Q Now, acceptance also affects perceptions of coverage,  
9 right?

10 A Absolutely.

11 Q So, why would you prefer to have the non-acceptance with  
12 the effect that has on perceptions of coverage than acceptance  
13 with discrimination?

14 A Because of how our business model works, which is really  
15 based on value, right, service and people being able to use  
16 the card in a variety of places and the last thing we want is  
17 people feeling discriminated against at point of sale and so,  
18 all the research has told us, you know, over the years that it  
19 impacts our business model and so I'd rather work with  
20 merchants that are warmly accepting us and bring our resources  
21 to bear than have a merchant who is constantly steering  
22 customers because they stop using -- clearly they stop using  
23 the cards at that particular merchant and we know it has a  
24 spillover effect in their utility or using the cards in other  
25 merchants, other locations, yes.

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1 Q So, to the small merchants that were accepting the  
2 cards, can you describe generally the steps that were taken  
3 in the organization to identify those small merchants that  
4 were not acting in compliance with the non-discrimination  
5 provisions?

6 A Sure, the way we recognized it for -- a couple of means,  
7 one is just people and the acquisition team in the areas, I  
8 get call -- I got calls, right, from employees, from  
9 relatives about people, you know, non-accepting or steering,  
10 right. And so, we also had a group internally that would  
11 do the analytics of small merchants and so what it showed  
12 was if all of a sudden volume dropped off for a period of  
13 time, we thought they either potentially went out of business,  
14 stopped accepting or suppressing, and so we made outbound  
15 calls. We have an organization and a group that's geared  
16 towards that.

17 Q And when those analytics were run, if there was a  
18 merchant that was identified as a potential suppressor when  
19 the outbound call was made, what would be done with respect to  
20 those merchants, how would American Express handle it?

21 A Well, it was pretty well scripted, we start with: We've  
22 noticed that your volume has fallen off, right, I'd like to  
23 talk to you about the value of American Express and accepting.

24 Sometimes merchants would tell us that they're  
25 suppressing for whatever reason and we try to work with them,

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1 send them POP materials, try to talk to them about the value  
2 of the relationship with American Express.

3 Q And if you couldn't convince them to stop suppressing,  
4 what would American Express do?

5 A You know, eventually we'd cancel the merchant.

6 Q Were there in fact situations with small merchants that  
7 American Express did cancel for suppression?

8 A Yes, which is tough, we're clearly not in the business of  
9 firing merchants or cancelling merchants.

10 Q So, I'd just like to show you one more document,  
11 Mr. Glenn, if you could look at Plaintiff's Exhibit 890.

12 MR. ORSINI: Your Honor, this one we can display  
13 publicly.

14 THE COURT: Okay.

15 Q The cover of this is an e-mail from Robert A. Glick. Who  
16 is Mr. Glick?

17 A He was head of -- he was in Corporate Communications and  
18 Government Affairs.

19 Q It is sent to an address that is amex@newmedia.com, do  
20 you know what that is?

21 A I don't.

22 Q And it is copied to Mr. House and to you and a few  
23 others, do you see that?

24 A I do, yes.

25 Q And the subject is: Final BOD Deck. What does that

*Glenn - direct - Orsini*

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1 refer to?

2 A Board of directors.

3 Q And if you take a look at the next page, you see the  
4 cover for a presentation?

5 A Yes.

6 Q Do you recall whether this was a presentation that was  
7 made to the board of directors?

8 A I believe it was by Dave House.

9 MR. ORSINI: Your Honor, I offer PX 0890 into  
10 evidence.

11 THE COURT: Any objection?

12 MR. HAMER: No objection.

13 THE COURT: All right, PX 0890 is received in  
14 evidence.

15 (Plaintiff's Exhibit 0890 so marked in evidence.)

16 Q Mr. Glenn, if you turn to the page that ends in Bates  
17 number 5345, slide 32, this part has your name on it.

18 A Okay.

19 Q Do you recall that you made a portion of this  
20 presentation?

21 A I do.

22 Q Now, if you then move to slide 40 which comes after the  
23 section that starts your piece, it is on Bates number 5353,  
24 the title is: Suppression and Coverage.

25 A Yes.

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1 Q Why were you presenting to the board on suppression  
2 issues?

3 A It was something we spend money on, it's important to our  
4 business model, not having suppression is important to our  
5 business model, it is critical to our business model and the  
6 board has experienced it, right, and they know about it, they  
7 know about that we spend money on it. Coverage and  
8 suppression are big issues. I say in here it really is about  
9 blocking and tackling of our business every day.

10 Q You're pointing down to the speaker notes?

11 A Yes.

12 Q What did you mean by that, "blocking and tackling of our  
13 business"?

14 A At the core of our business it is to get more merchants  
15 to accept, to retain those merchants and to have them warmly  
16 accept your card and not suppress.

17 Q And if you could just turn to slide 5357, slide 44, the  
18 title is: Suppression: The Small Merchant.

19 A Yes.

20 Q Now, with respect to Europe, there's -- well, let me work  
21 my way down.

22 With respect to Latin America, there's a reference  
23 to blitzing the marketplace. What does blitzing the  
24 marketplace refer to?

25 A So, we occasionally have had market blitzes where we'd

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1 send not only the acquisition teams out but employees out to  
2 check stores and to put up decals, so if the strips, the decal  
3 strips weren't there, they actually brought them. We'd have  
4 these folks work with our acquisition folks on trying to  
5 acquire merchants. It was really an effort not only to get  
6 more merchants to accept and to address suppression but it was  
7 to educate our folks in the card business, in the service  
8 centers about the value of merchant acceptance and how  
9 critical it was to our business. So, we had New York blitzes  
10 and Phoenix blitzes and took people from all parts of the  
11 organization.

12 Q And under North America there's a reference to reducing  
13 signage and active suppression, 57 percent, 41 percent,  
14 respectively, in five key markets, listing the five key  
15 markets.

16 What is that a reference to?

17 A So, those were reduction in both signage suppression,  
18 which means making sure that the decals are up, right, as well  
19 as the active suppression, which I talked about, which is more  
20 when you go to pay and someone asks you to use a different  
21 form of payment.

22 Q Do you recall how American Express targeted those issues  
23 in those five key areas?

24 A Well, they were -- you mean in the five key markets?

25 Q Yes.



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1 A I think it was a combination of big markets for us where  
2 we saw suppression up, right, and that was from the analytics  
3 we did, the reporting that we had from employees and from  
4 cardmembers generally.

5 Q And down next to Europe it references:

6 Utilizing Predictive Model to Identify Potential  
7 Suppressors.

8 Is that referring to what you've been talking about  
9 doing in the United States?

10 A The analytics in looking at the spending and transaction  
11 history.

12 Q Mr. Glenn, just two more questions.

13 When the United States government filed this  
14 lawsuit, you were -- actually three questions -- you were the  
15 head of Global Merchant Services, correct?

16 A Yes.

17 Q And did you agree with the decision by the company to  
18 fight this lawsuit?

19 A I did.

20 Q And why?

21 A Probably because I've lived in the merchant business  
22 for, you know, my tenure at American Express and our  
23 non-discrimination rules were put in place for a reason and  
24 it's the evidence that I saw and the analytics I saw when I  
25 joined and then my history in working, in leading Merchant

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1 Services which is it is so critical to our brand. We don't  
2 have the transaction size that our competition has, right, and  
3 we're not accepted everywhere and we work really, really hard  
4 to gain acceptance and so, to gain that acceptance and have  
5 cardmembers steered, it impacts our -- not just the merchant  
6 business, it impacts our overall business.

7 MR. ORSINI: Thank you, Mr. Glenn.

8 No further questions.

9 MR. HAMER: If I could have a moment to set up?

10 THE COURT: Sure.

11 (Continued on next page.)  
12  
13  
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19  
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24  
25

GLENN-CROSS-HAMER

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1 MR. HAMER: If I could have a moment to set up.

2 (Pause in the proceeding.)

3 MR. HAMER: May I approach, Your Honor?

4 THE COURT: Yes, you may.

5 All right. The government may inquire on

6 cross-examination.

7 MR. HAMER: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HAMER:

10 Q Good morning, Mr. Glenn. My name is Mark Hamer. I  
11 represent the United States. I have a few more questions for  
12 you.

13 First I want to go back to the issue you talked  
14 quite a bit this morning on coverage and ask you some more  
15 questions about that topic. You've talked about locations and  
16 you've talked about the spend, right?

17 Is that correct?

18 A Yes.

19 Q There's two different metrics of coverage that you look  
20 at, right?

21 A Yes.

22 Q And location is focusing on the number of merchants and  
23 spending is more focused on the transactions of the merchants,  
24 right?

25 A Yes.

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1 Q Would you agree that locations, in force, is not the most  
2 reliable way to compare Amex's coverage to Visa and  
3 MasterCard?

4 A What I would say is that the -- the number of locations  
5 calculated isn't as accurate because we don't know exactly how  
6 Visa and MasterCard count the number of locations because it  
7 comes through their acquiring businesses, which will -- we  
8 know how many locations we have, right. And so -- and we know  
9 how many merchants are out there. So internally, it's fairly  
10 reliable.

11 THE COURT: Hold on a second. Can we check the live  
12 feed.

13 (Pause in the proceeding.)

14 Q Let me ask you the related question. Would you agree  
15 that even measured by merchant locations, lack of broad  
16 acceptance is not one of the greatest barriers in America  
17 Express's growth?

18 A I didn't hear the end of the question.

19 Q Would you agree that measured by merchant locations, lack  
20 of broad acceptance is not one of the great barriers to  
21 American Express's growth?

22 A I would disagree with that.

23 Q In front of you you have a white binder. We're also  
24 going to go back to Mr. Orsini's binder. But right now, if  
25 you can open your white binder of exhibits to PX 0905. This

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1 is an e-mail from Christine Elliott to Cristina Scardino,  
2 S-C-A-R-D-I-N-O, and William Glenn. Subject line: "Final  
3 script in Q & A, August 2nd, 2005." On the second page of  
4 that document is a Q & A entitled Bill Glenn, Financial  
5 Communities Presentation Q & A Prep Document.

6 MR. HAMER: Plaintiff's offer PX 0905 into evidence.

7 MR. ORSINI: No objection, Your Honor.

8 THE COURT: PX 0905 is received in evidence.

9 (So marked as Plaintiff's PX 0905 in evidence.)

10 Q Mr. Glenn, as part of your duties when president of  
11 global merchant services -- well, strike that.

12 At this time, in 2005, you were president of  
13 establishment services, right.

14 A Yes. I don't know whether at that point in time I took  
15 responsibility for the networks globally, which, around this  
16 period of time, was ES North America.

17 MR. HAMER: Your Honor, can we switch the screen.

18 THE COURT: Sure.

19 Q Global merchant services and establishment services, you  
20 had occasion to talk to the financial communities, is that  
21 correct?

22 A Yes.

23 Q When you did that, you were prepared by reviewing scripts  
24 of possible questions and answers you might face, right?

25 A Yes.

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1 Q It's important to be prepared and accurate when you met  
2 with the financial community, right?

3 A It is.

4 Q So if you look at the first section on the page ending in  
5 926, which is the second page of this exhibit, there's a  
6 couple of questions about coverage. The first question says,  
7 "Isn't the lack of broad acceptance one of the greatest  
8 barriers to AXP's growth?"

9 And AXP is American Express, right?

10 A Uh-huh.

11 Q Right?

12 A Yes.

13 Q And the answer is, "First, I would take issue with that  
14 characterization. As I said, our Locations in Force have been  
15 growing at about 11 percent CABR each year for the past  
16 decade. We have long-term partnerships in both T&E and  
17 everyday spend categories, and we are well positioned in  
18 emerging industries due to plastics like health care  
19 insurance, the luxury categories need to be accepted."

20 Did I read that correctly?

21 A Yes, you.

22 Q And again, these are anticipated questions from the  
23 financial community to you, right?

24 A Anticipated questions, yes.

25 Q And these are your prepared answers so you can respond to

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1 those questions, right?

2 A Whether they're prepared or recommended for how I would  
3 answer that question, which is different.

4 Q Thank you.

5 And the next one, the next question is, "Why doesn't  
6 AXP disclose a LIF number?"

7 Did I read that correctly?

8 A Yes.

9 Q And American Express has not disclosed LIF numbers in the  
10 past, correct?

11 A That is not true.

12 Q At the time of this document, which is 2005, American  
13 Express does not disclose any Location in Force numbers  
14 publically, is that correct?

15 A I believe that's true, at that point in time we stopped.  
16 We had stopped at some point.

17 Q In your 10Ks, American Express discloses spend coverage  
18 as a coverage method, correct?

19 A Yes. I don't know when that began.

20 Q So the answer to this question, your answer, proposed  
21 answer, is, "We made that decision several years ago because  
22 there is no standard industry definition of a merchant or  
23 accepting location, so it's like comparing apples and  
24 goldfish. The bank card networks include ATMs and multiple  
25 Point of Sale terminals in a single location merchant. So one

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1 drug store with five POS terminals and an ATM machine might be  
2 counted as six locations in force. In addition, we continue  
3 to make considerable efforts to scrub our databases of  
4 inactive merchants, merchants who might have gone out of  
5 business or who are no longer accepting plastic. By contrast,  
6 Visa and MasterCard make little effort to clean their  
7 databases. And as a result, tend to cite numbers that are  
8 considerably inflated."

9 Did I read that correctly?

10 A You did.

11 Q This is in 2005, throughout your tenure as head of  
12 merchant services, you continue to have communications with  
13 the financial community, right?

14 A Yes. Infrequent, but yes.

15 Q Infrequent. But when you had them they were important,  
16 correct?

17 A Yes.

18 Q Let's look at another document, which is Plaintiff's  
19 Exhibit 0131, also in your white binder. This is a -- I'll  
20 just read it for the record while you're looking. This is a  
21 printout of a Bloomberg transcript of a financial community  
22 meeting August 4th, 2010.

23 MR. HAMER: Plaintiff's would offer PX 0131 into  
24 evidence.

25 MR. ORSINI: No objection.



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1 THE COURT: PX 0131 is received in evidence.

2 (So marked as Plaintiff's PX 0131 in evidence.)

3 MR. HAMER:

4 Q This shows questions and answers. And identifies who the  
5 speaker is, correct?

6 A It looks like it, yes.

7 Q You are identified in about the middle of the page as the  
8 speaker at this meeting, correct?

9 A Yes.

10 Q You did attend this meeting, correct?

11 A I don't recall attending this meeting. But I have no  
12 reason to say I didn't.

13 Q First, the first sentence in the middle, I'm looking at  
14 the reference to your name. You say -- there's a question  
15 that's posed that I won't read that references merchant  
16 acceptance as well as other issues including business insight.

17 Your answer says, "I don't know if I can give you  
18 more context to what's been reported because it's a flawed  
19 base, and I think that's why we stopped reporting probably ten  
20 years ago."

21 What's the flawed base that you're referring to  
22 there?

23 A It's the reporting for locations in force that we  
24 referenced earlier.

25 Q Okay. Thank you.

GLENN-CROSS-HAMER

4803

1 A Again, not our locations, but compared to what Visa and  
2 MasterCard reported.

3 Q Thank you.

4 You go on to say, "I will tell you that our -- as I  
5 said earlier, our transactions have been growing, our  
6 locations in force and cost to grow have been growing. You  
7 see what OnePoint did in the U.S. in terms of that construct."  
8 Then you go on to talk about spend.

9 You go to the next paragraph, you say the following:  
10 "So I think we've found the model. And remember, that most of  
11 the GAP, the overwhelming majority of the GAP is with the  
12 small merchants, right. Because as you've seen, our spend  
13 coverage is pretty high. So I'd say if you add up the new  
14 construct, and just looking at the U.S. and looking at  
15 OnePoint, our transactions, and then the new book of charge  
16 volume, I'd say that I'm pretty pleased with our performance  
17 in terms of overall growth and location."

18 Did I read that correctly?

19 A Yes.

20 Q Let me turn you to another document on the same topic.

21 MR. HAMER: One moment, Your Honor.

22 Q If you turn to, in your white binder again, Mr. Glenn, to  
23 Exhibit PX 2725, this is a new exhibit. We added an exhibit  
24 today. This is from Amex's files. The title is GMS Coverage  
25 Growth Presentation for Ed Gilligan and Bill Glenn, July 9th,

GLENN-CROSS-HAMER

4804

1 2010.

2 Is this a deck that was presented to you and  
3 Mr. Gilligan in 2010?

4 A I actually don't recall.

5 Q If you want to take a moment to look at it.

6 MR. HAMER: Plaintiff's offer PX 2725 into evidence.

7 MR. ORSINI: Your Honor, may I have moment to look  
8 at it as it was added today?

9 THE COURT: Okay.

10 MR. ORSINI: No objection.

11 THE COURT: PX 2725 is received in evidence.

12 (So marked as Plaintiff's PX 2725 in evidence.)

13 Q Do you have any reason to doubt this was presented to you  
14 on the topic of coverage in 2010?

15 A And Ed Gilligan, no, I don't have a reason to believe  
16 that it wasn't.

17 Q Okay. Thank you.

18 If you could look to page 644. This is page 9 of  
19 the slide presentation.

20 A Sure. Can I look through the entire document?

21 Q Please do.

22 THE COURT: Is this going to be redacted or is it  
23 not for public disclosure?

24 MR. HAMER: Let me make sure I know the answer to  
25 that before I respond.

GLENN-CROSS-HAMER

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1 THE COURT: Because it has a lot of numbers.

2 MR. ORSINI: It never was disclosed to us. We have  
3 to review it for confidentiality. I do see a lot of numbers,  
4 so there may be things that we need to redact. For now we'll  
5 keep it confidential. We'll let Your Honor know.

6 THE COURT: That's fine. Is that agreeable?

7 MR. HAMER: That is agreeable.

8 THE COURT: Very well.

9 Q Did you have a chance to look at it?

10 A Yes.

11 Q You have no reason to doubt that this was a slide deck  
12 presentation that was given to you and Mr. Gilligan, right?

13 A Again, I don't. But I don't recall reviewing it.

14 Q If you can look at page 644, there's a deck -- or a  
15 slide, rather, that says the following -- first, let me ask  
16 you, I think I've got this right here. In your direct  
17 testimony you said that your objective is to get as much  
18 coverage as you can.

19 A Sure.

20 Q It says this deck -- this slide says, "In the U.S. we  
21 have strong coverage over 77 percent in the largest charged  
22 DMAs." We'll stop there.

23 This is referring to locations coverage, right?

24 A Yes.

25 Q DMA is the Designated Market Area, correct?

GLENN-CROSS-HAMER

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1 A It's a marketing area. I don't think it's designated.  
2 It's some marketing area.

3 Q It refers to a geographic area?

4 A It does.

5 Q So in this case, as you see in the slide, each city is a  
6 different DMA, right?

7 A Yes.

8 Q And you measure locations in force by DMAs, right?

9 A Correct.

10 Q And those numbers fold up into your aggregate locations  
11 figures for the whole country, right?

12 A Yes.

13 Q So this slide says, "In the U.S. we have strong coverage  
14 over 77 percent in the largest charged DMAs indicating that  
15 while there may be targeted opportunities for adding LIF" --  
16 that's Location in Force, right?

17 A Yes.

18 Q "Increasing LIF across the network may not be necessary."

19 Did I read that correctly?

20 A You did, yes.

21 Q And if you look a little further at the data on this  
22 chart, it's dividing up locations based on the top 25 cities  
23 by charge volume, is that right?

24 A It's tough to read.

25 Q It is hard to read.

GLENN-CROSS-HAMER

4807

1 A Yes.

2 Q But you see at the bottom there's a list of city names?

3 A Yes.

4 Q It's ranking them by charge spend in those DMAs, right?

5 A Looks like it, yes.

6 Q To the far left, the most charge spend DMA is New York  
7 City?

8 A Yes.

9 Q To the far right, the lowest of the top 25 is Oklahoma  
10 City, right?

11 A Yes.

12 Q That's consistent with your recollection of this data,  
13 right?

14 A No. It's consistent with what I'm seeing now. I don't  
15 recall seeing that.

16 Q Okay. Fair enough.

17 As an example, let's take the third listed. It's  
18 San Francisco, do you see that?

19 A Yes.

20 Q At the bottom it lists the total coverage and the  
21 percentage, am I correct?

22 A Yes.

23 Q That's referring to the locations coverage, right?

24 A Correct.

25 Q The number in the bracketed figure for San Francisco,

GLENN-CROSS-HAMER

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1 that percentage is the percentage of locations in San  
2 Francisco, right?

3 A I'm sorry. The [REDACTED] percent? Is that [REDACTED] percent?

4 Q Don't use the number.

5 THE COURT: It'll be redacted later on, but try not  
6 to use the number.

7 Q That figure in the bracketed bar for San Francisco is the  
8 percentage of Locations in Force in San Francisco?

9 A Again, not active, but the percentage.

10 Q If you look at the left-hand column, it lists dollar  
11 amounts. This shows the weighting of coverage based on the  
12 charge in those different DMAs, is that right?

13 A I'm sorry. You're referring to?

14 Q The left-hand chart at the left-hand side of this slide.  
15 It has numbers from zero to 25.

16 A Yes, it looks like it.

17 Q So San Francisco is the third DMA based on charge card  
18 spend in the United States as of this year, correct?

19 A It looks like it, yes.

20 Q So if you look on the previous page of this exhibit,  
21 page ending in 643, there's a slide that says, "While there  
22 are opportunities to grow LIF coverage, a more significant  
23 opportunity exists to drive activation and merchant activity."

24 Did I read that correctly?

25 A Yes.

GLENN-CROSS-HAMER

4809

1 MR. HAMER: May I have a moment, Your Honor?

2 (Pause in the proceeding.)

3 Q If you go back to Mr. Orsini's binder, the black binder  
4 to your right, let's look at a document that you were  
5 discussing earlier today. DX 6791. This is the board  
6 presentation that you described.

7 Do you have that?

8 A I do.

9 Q Look at page 565. This is slide 6. And I believe this  
10 is a slide you were discussing with Mr. Orsini.

11 A Yes.

12 Q You were talking about the challenge in expanding  
13 coverage by adjusting your price.

14 Do you recall that?

15 A I do.

16 Q Look down to the bottom right of this slide under  
17 coverage gap. The third bullet says, "Primarily with small  
18 merchants driven by" -- and this means coverage gap is driven  
19 by, correct?

20 A Yes.

21 Q "Primarily with small merchants coverage gap driven by  
22 three items; scale and relevance challenges, higher pricing,  
23 and operational differences."

24 Right?

25 A Yes.



GLENN-CROSS-HAMER

4810

1 Q So higher pricing is one of the three elements that is  
2 driving the coverage gap with small merchants, right?

3 A I said that, yeah. I testified to that earlier. It  
4 certainly was, right. And it's also the perception of what  
5 the pricing is.

6 Q The third item, operational differences, as you  
7 testified, that also was a reason for the coverage gap among  
8 small merchants?

9 A Right, which we adjusted from time-to-time.

10 Q Exactly. So through the OnePoint program you adjusted  
11 the difference between the operational efficiency of Visa and  
12 MasterCard and the operational efficiency of American Express  
13 for the merchant, right?

14 A We adjusted ours. Some of ours, not all the operational  
15 pieces, right, to be more consistent with what the merchants  
16 wanted to see.

17 Q And the scale and relevance challenges, among those, LIF  
18 activation is one of them, right? If you improved your LIF  
19 activation, you can impact the scale and relevance challenges  
20 for small businesses?

21 A No. Actually, it's scale and relevance challenges are  
22 the number of cards we have in the marketplace compared to  
23 Visa and MasterCard, which is 50 million or 60 million, U.S.,  
24 compared to 2 billion. So that leads to activation, right.  
25 And the numbers we saw earlier were not activation, they were

GLENN-CROSS-HAMER

4811

1 just coverage numbers.

2 Q Understood. So as you just said, the activation of the  
3 merchants who have actually already signed up to accept the  
4 card can also help with you closing the coverage gap among  
5 small merchants, right?

6 A So if we get more activation accepting merchants, right,  
7 and through fighting suppression and steering and all that, I  
8 think it will lead to greater spending and greater merchants.

9 Q And in fact, as you testified, your perception of the  
10 coverage. To increasing activation improves your perception  
11 of coverage, right?

12 A Increasing perceptions of coverage increases activation.

13 Q Okay.

14 A That way.

15 Q They're interrelated concepts, right?

16 A I'd say that increasing perceptions of coverage and  
17 actual coverage and not having suppression increases  
18 activation, which we found in a lot of the small merchants,  
19 right. That's where the majority of the suppression and  
20 steering takes places.

21 Q A couple of more questions, Mr. Glenn, on the topic of  
22 coverage. If you can look in the white binder, the exhibit is  
23 PX 924, 0924.

24 Do you have that in front of you?

25 A I do.

GLENN-CROSS-HAMER

4812

1 Q This is a slide presentation entitled DMA coverage update  
2 WHG Staff Meeting, dated February 23rd, 2011. And Plaintiff's  
3 offer PX 0924 in evidence?

4 MR. ORSINI: No objection, Your Honor.

5 THE COURT: PX 0924 is received.

6 (So marked as Plaintiff's PX 0924 in evidence.)

7 THE COURT: This is disclosed?

8 MR. HAMER: It is something that is confidential.

9 THE COURT: All right.

10 Q If you can look briefly at the slide ending in 809.

11 A I'm sorry?

12 Q 8809, slide 16 of this deck.

13 Do you have the document?

14 A I do.

15 Q At the bottom, does that accurately reflect the spend  
16 coverage that American Express calculated for 2009 and 2010?

17 A I believe it does.

18 Q Then if you look on the page ending in 815, the slide  
19 entitled Spend Coverage Methodology. We're not going to go  
20 through this now, but does this capture the methodology by  
21 which American Express calculates spend coverage based on its  
22 Locations in Force information?

23 A I believe it does.

24 Q If you look on the last page, 816, this is a copy of the  
25 language in your 10K disclosing your spend coverage

GLENN-CROSS-HAMER

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1 percentage, right?

2 A Yes.

3 Q And this is part of the process by which American Express  
4 determines what that disclosure should be, right?

5 A You mean the analytics?

6 Q Yes. The documents part of that process; correct?

7 A I don't -- I don't know if it's the document itself, but  
8 this reflects the analytics.

9 Q I just want to ask you, introduce one more document on  
10 this topic. If you could turn in the white binder to PX 2728.  
11 This also is a newly-added document from American Express  
12 files, and not currently on the exhibit list. The title is  
13 "Top to Top Meeting, Proctor & Gamble, American Express,  
14 August 30th, 2010."

15 MR. HAMER: Plaintiffs would offer this document  
16 into evidence.

17 MR. ORSINI: May I have a moment, Your Honor.

18 THE COURT: Sure.

19 MR. ORSINI: I don't have an objection, but I do  
20 notice there are some confidential numbers in here, so keep it  
21 confidential.

22 MR. HAMER: Thank you.

23 THE COURT: PX 2728 is received into evidence.

24 (So marked as Plaintiff's Exhibit 2728 in evidence.)

25 Q Mr. Glenn, I just want to direct you to page ending in

GLENN-CROSS-HAMER

4814

1 190. There is a slide that is entitled "spend coverage by  
2 Industry Category." Do you have that slide?

3 A I do.

4 Q At the top it says, "The comparison of our card members  
5 spending on our network with our estimate what our card  
6 members would spend on our network if all merchants that  
7 accept credit cards accepted American Express cards." Did I  
8 read that correctly?

9 A You did.

10 Q Is that your understanding of what spend coverage is as  
11 American Express uses it?

12 A All merchants that accept credit cards -- I believe so.

13 Q Thank you. If you look at the breakdown by industry  
14 category, there are some figures on the far right. Do you see  
15 that?

16 A Yes.

17 Q And that depicts the spend coverage by the various  
18 industry categories listed; is that right?

19 A I don't know if this is the spend coverage itself. I  
20 have never seen this the page, so I wasn't there it was on the  
21 distribution list.

22 Q Have you seen breakdowns by industry category of American  
23 Express' spend coverage?

24 A I have not.

25 Q Then I was incorrect, I thought what you had is the last

GLENN-CROSS-HAMER

4815

1 document. There is one final document on coverage I want to  
2 ask you about, is the one that Mr. Orsini showed you earlier,  
3 DX 4184 in your black binder.

4 A I am sorry. P or --

5 Q DX 4184 in your black binder. That's perceptions of  
6 coverage.

7 A All right.

8 Q Do you have that document?

9 A I do.

10 Q If you look at page 860, I believe you were discussing  
11 with Mr. Orsini, there's a slide that says "POS Drives Charge  
12 Volume." This is you were describing just how point of sale  
13 materials can assist American Express in increasing its charge  
14 volume; right?

15 A Yes. I don't think that we discussed this slide.

16 Q Oh, I apologize. Okay. You discussed a similar slide to  
17 this --

18 A I know --

19 Q Well, just focusing on this slide, 860, it discusses how  
20 POS, or point of sale material can drive charge volume for  
21 American Express; is that right?

22 A Yes.

23 Q You express a concern that if merchants steer away from  
24 American Express, it lowers your perception of coverage;  
25 right?

GLENN-CROSS-HAMER

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1 A Yes.

2 Q And you also said that, I believe that you said it could  
3 work both ways, the practice of steering can work both ways;  
4 correct?

5 A Both ways in terms -- I'm sorry.

6 Q Let me ask you the question. If American Express had  
7 more success in placing point of sale materials at merchants  
8 to steer towards American Express, and advertise American  
9 Express acceptance, that can assist American Express in  
10 improving perceptions of coverage; right?

11 A No, we don't put point of purchase up to steer. We ask  
12 for equal treatment of point of sale. To me that is not a  
13 steer. It is recognition that the merchant accepts American  
14 Express.

15 Q I'm sorry, I didn't mean to suggest that you do right  
16 now. My question was if you were to do so, you agree that you  
17 would be able to improve perceptions of coverage, by putting  
18 American Express materials at the point of sale, advertising  
19 that coverage?

20 A I don't understand your question. So if you could repeat  
21 it.

22 Q American Express could improve perceptions of coverage by  
23 putting point of sale materials advertising American Express  
24 acceptance at merchants; correct?

25 A We can improve perceptions of coverage by having equal

GLENN-CROSS-HAMER

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1 treatment at point of sale, which is what we ask for in our  
2 contract. Non-discrimination.

3 Q Check presenters, which is referenced on this slide, is  
4 an example where it's not equal if only the American Express  
5 logo is displayed on the check presenter; right?

6 A Or MasterCard or Diners or some -- some other brand.

7 Q This is a situation where the only logo displayed in the  
8 item is the logo of a particular card network; right?

9 A Correct. I don't think I've seen multiple on check  
10 presenters. But I have seen that three months in they change  
11 out to another check presenter as well. So they use multiple  
12 brands for check presenters.

13 Q Has having American Express check presenters assisted  
14 American Express in improving its perceptions of coverage?

15 A Oh, I think it does, yes.

16 MR. HAMER: Thank you.

17 THE COURT: Could we get a clearer definition of  
18 what spend coverage is, in your estimation, or in your  
19 terminology, the way that you do your job?

20 THE WITNESS: Yes.

21 THE COURT: Because it can have a number of  
22 different meanings.

23 THE WITNESS: I think where people can use plastic  
24 and the total spend across those industries; right? We would  
25 cover 90 percent plus of our card members' spend. In the



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1 international it is greater than 80, so where plastic is  
2 used --

3 THE COURT: If I am an Amex card holder and I have  
4 other credit cards, your spend coverage for me would be if I  
5 spent 90 percent of my spend using the Amex card, I would have  
6 90 percent spend rate?

7 THE WITNESS: It wouldn't be the individual.

8 THE COURT: It would be who?

9 THE WITNESS: Just generally, so where plastic is  
10 accepted --

11 THE COURT: Right.

12 THE WITNESS: -- right? That our card members can  
13 spend in over 90 percent of those locations. Not the  
14 locations. The total spend.

15 THE COURT: Irrespective of the number of locations  
16 comparatively you have as compared to Visa/MasterCard.

17 THE WITNESS: That is correct.

18 THE COURT: So you may have two thirds of the  
19 locations that Visa/MasterCard have, but you might have a  
20 larger spend ratio for the spend --

21 THE WITNESS: Spend coverage. So in the U.S., if  
22 it's 77 percent coverage, we have a higher spend coverage than  
23 location coverage; right? But I said earlier, location  
24 coverage impacts the card member, generally the card member  
25 behavior.

GLENN-CROSS-HAMER

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1 THE COURT: Anything else?

2 Q Just to close that out, following up on the Court's  
3 question, we saw some figures that were -- well, let me give  
4 you a specific figure. If a number for a particular industry  
5 were 98 percent spend coverage, does that mean 98 out of a  
6 hundred times when the Amex cardholder tries to use his or her  
7 card in a merchant of that category, they would be able to?

8 A No. It has to do with the overall spend.

9 Q All right. So not weighted by spend?

10 A Yes.

11 THE COURT: It depends on dollars? Dollars spent?

12 THE WITNESS: Total dollars spent. Not the  
13 transaction.

14 THE COURT: All right.

15 THE WITNESS: So smaller merchants, smaller take-in  
16 size, biggest gap.

17 BY MR. HAMER:

18 Q So I guess a way to summarize it is if you had let's say  
19 80 percent of the number of locations in a particular segment,  
20 but had 90 percent of the spend in that segment, the spend  
21 coverage would be 90 percent.

22 A Not the spend. The ability to spend. Not the actual  
23 spend.

24 Q Thank you. The ability to spend.

25 A I think that is a calculation. Again, I am not sure

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1 exactly sure how that -- and I can take some time and go  
2 through the pancake calculations but generally it is the  
3 ability to use our plastic in those categories.

4 Q Going back to what we just looked at in exhibits -- we  
5 just ran through PX 2728. The comparison of adding American  
6 Express into the -- the comparison of American Express' card  
7 members' spending on our network with our estimate of what our  
8 card members would spend on our network if all merchants that  
9 accept credit cards accepted American Express cards; is that  
10 correct?

11 A Again, that was a document that you referred to in the  
12 Proctor & Gamble?

13 Q Yes.

14 A I don't understand that calculation.

15 THE COURT: What page was that again?

16 MR. HAMER: It was on 190 of exhibit PX 2728.

17 THE COURT: It might be interesting to get some more  
18 clarity on that from somebody. It is an Amex document, so  
19 clarity from Amex would be helpful to the Court. So that this  
20 witness, who isn't not that familiar, really, with it, and the  
21 Court could have a better grasp. Mr. Orsini.

22 MR. ORSINI: We'll find one and let that happen,  
23 Your Honor.

24 THE COURT: I appreciate that.

25 BY MR. HAMER:

GLENN-CROSS-HAMER

4821

1 Q Let me switch topics. You talked about your efforts over  
2 the last decade to enforce the anti-steering rules. Do you  
3 recall that?

4 A Yes.

5 Q And how important that is to you. I want to explore that  
6 in some specific details, and look how that played out with  
7 particular merchants.

8 If you can look again in your white binder at  
9 Exhibit PX 0969. This is an e-mail from Christina Scardino,  
10 S-C-A-R-D-I-N-O, to William Glenn, November 16th, 2004. It  
11 says "Attached performance management process."

12 A I'm sorry, PX --

13 Q PX 0969.

14 This is not one for the public.

15 A I got it.

16 Q If you can turn --

17 MR. HAMER: Well, first of all, the plaintiffs offer  
18 PX 0969 into evidence.

19 MR. ORSINI: No objection, Your Honor.

20 THE COURT: All right. PX 0969 is received in  
21 evidence.

22 (So marked Plaintiffs' Exhibit 0969 in evidence.)

23 Q This is a self appraisal for Rocco Laterzo,  
24 L-A-T-E-R-Z-O; right?

25 A Yes, it appears to be.

GLENN-CROSS-HAMER

4822

1 Q This is someone that reported up to you; right?

2 A Yes.

3 Q I am just going to focus you on one page on this  
4 document, page ending in 268. Do you have that there?

5 A I do.

6 Q In the middle it says, and this is Mr. Laterzo reporting  
7 on his achievement for the year; correct?

8 A Yes.

9 Q About the center of the page he says, "Insured card  
10 member choice at points of sale by eliminating preference  
11 campaign," and then he lists six merchants: ASL Resorts,  
12 Liberty Travel, Regal Cinemas, Travelocity, Zagat Online,  
13 CheapTickets.com. Did I read that correctly?

14 A You did.

15 Q And these are all merchants who were involved in  
16 preference campaigns with competitors?

17 A I imagine they were, yes.

18 Q And American Express has caused those merchants to stop  
19 engaging in those campaigns; right?

20 A We worked to eliminate preference campaigns.

21 Q Let's look at a couple of those. If you could turn to  
22 Exhibit PX 1077. And this is an e-mail from Alex Grimaldi,  
23 G-R-I-M-A-L-D-I, to William Glenn dated January 7, 2005.

24 MR. HAMER: The plaintiffs offer PX 1077 into  
25 evidence.

GLENN-CROSS-HAMER

4823

1 MR. ORSINI: No objection.

2 THE COURT: PX 1077 is in evidence.

3 (So marked Plaintiff's Exhibit 1077 in evidence.)

4 Q And on occasion, Mr. Glenn, while you had many of these  
5 people working under your supervision, you were personally  
6 involved in stopping preference campaigns on occasion; is that  
7 right?

8 A Yes, if I became aware of them.

9 Q This is an e-mail chain concerning Zagat; is that right?

10 A Yes.

11 Q And they are a firm that provides restaurant reviews;  
12 correct?

13 A They are.

14 Q If you look at the second page ending in 473 in the  
15 center, there is a heading that says, "Zagat relationship with  
16 MasterCard," and it says, "Zagat currently has a marketing  
17 relationship with MasterCard, but they have eliminated use of  
18 card prefers as of May 2004 after American Express  
19 cancellation threat." Did I get that correct?

20 A You do.

21 Q American Express threatened to cancel Zagat's acceptance  
22 of the American Express card unless it ended a preference  
23 campaign with MasterCard?

24 A That is definitely how it reads, yes.

25 Q And on the first page of this document, you have

GLENN-CROSS-HAMER

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1 forwarded the summary of the Zagat situation to "Attention:  
2 All"; right?

3 A Yes.

4 Q And you obviously reported to Mr. Grimaldi at this time;  
5 correct?

6 A I did.

7 Q Ultimately. He is at the top of the list.

8 A Oh, yes.

9 Q You were advising him of this before he met with  
10 Mr. Zagat; right?

11 A Yes.

12 Q If you can look at another of the merchants -- strike  
13 that. Let me ask this question:

14 Another of the merchants that Mr. Laterzo referenced  
15 as having a definitive preference campaign was  
16 CheapTickets.com. Do you recall that?

17 A I recall him referencing it, but I don't recall.

18 Q Let's look at another document, PX 0295. This is a  
19 letter from Carlos Dafonte, D-A-F-O-N-T-E, of American Express  
20 to Hitesh, H-I-T-E-S-H, Patel, P-a-t-e-l, of Cendant  
21 Corporation, C-E-N-D-A-N-T, March 30th, 2004.

22 And plaintiffs offer 0295 into evidence.

23 MR. ORSINI: No objection, Your Honor.

24 MR. HAMER: I believe there is a confidentiality  
25 objection to this document to be displayed.

GLENN-CROSS-HAMER

4825

1 THE COURT: Very well. PX 0295 is received in  
2 evidence.

3 (So marked Plaintiffs' Exhibit 0295 in evidence.)

4 Q On the bottom there is a list of people who were copied  
5 on this, including Mr. Laterzo; correct?

6 A Yes.

7 Q He is someone whose performance review we were just  
8 looking at a moment ago; right?

9 A Laterzo was, yes.

10 Q And Cendant was the parent of CheapTickets.com at this  
11 time; right?

12 A I don't know if that was the relationship. But it seems  
13 that it might be. I wasn't copied on this.

14 Q Let's see if this refreshes your recollection of these  
15 events. If you look at first paragraph of the letter, it  
16 says, "As a follow-up to my December 15th, 2003 letter to Don  
17 Smith, attached, and recent conversations with you regarding  
18 the provision in our merchant agreement that prohibits  
19 CheapTickets from stating a preference for a competing card,  
20 we're serving you final notice that CheapTickets will no  
21 longer be able to accept the American Express card as of  
22 May 1, 2004, unless all instances of preference language,  
23 e.g., we/CheapTickets prefers MasterCard are removed from the  
24 CheapTickets website as well as any marketing or communication  
25 vehicles, which indicate this payment preference." Did I get



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1 that right?

2 A You did.

3 Q Okay. And the next paragraph says, "All of our merchant  
4 agreements contain the clause prohibiting statements of  
5 preference for competing payment vehicles." Did I get that  
6 right?

7 A Yes some.

8 Q Did CheapTickets.com in fact stop running a preference  
9 campaign after that letter?

10 A I don't know the result. I assume they did. This letter  
11 also indicates that we've had several conversations with. As  
12 I indicated earlier, preferences impact our brand and our  
13 business model and our card members, so we take it very  
14 seriously.

15 But we work with them, you know, to try to  
16 negotiate. So I don't know what the end result is. It looks  
17 like on his performance review he said that they stopped  
18 preferencing.

19 Q Thank you. And these events are consistent with the  
20 policy you were describing on you direct exam with Mr. Orsini;  
21 right?

22 A The policy being ultimately we would cancel, absolutely.

23 Q There were other occasions like this where American  
24 Express cancelled merchants who were running preference  
25 campaigns with American Express and its competitors; is that

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1 right?

2 A I can't think of any specifics, but yes.

3 Q Turn to PX 0486 in the same binder. This is an e-mail  
4 chain, the top of the chain is Kevin Carey, C-A-R-E-Y, to  
5 Kathleen Finnagan, F-I-N-N-A-G-A-N, Travelocity update,  
6 January 2nd, 2004.

7 THE COURT: Is this subject to confidentiality?

8 MR. HAMER: There is no confidentiality objection.

9 MR. ORSINI: That's right.

10 MR. HAMER: And I believe we have already introduced  
11 this. To be certain, though, we'd offer PX 0486 into  
12 evidence.

13 THE COURT: PX 0486 is in evidence.

14 (So marked Plaintiffs' Exhibit 0486 in evidence.)

15 Q Mr. Glenn, you see in the middle of the chain the first  
16 page includes an e-mail that is copied to you?

17 A You mean to Kevin Carey?

18 Q Yes.

19 A Yes.

20 Q So you were copied on part of this e-mail chain about  
21 Travelocity; right?

22 A I was.

23 Q You were aware of the events as they occurred; right?

24 A Yes. I don't know quite when, but I was made aware of  
25 it, yes, absolutely.

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1 Q At the bottom Mr. Carey reports, "Attached below is an  
2 exchange of e-mails with Travelocity's earlier removal of the  
3 preferred language from their website for January 1st. With  
4 this amendment we have withdrawn our notice to cancel their  
5 merchant issue."

6 Did I read that correctly?

7 A Yes.

8 Q Travelocity, as you already heard from others, had run a  
9 campaign for preference with MasterCard prior to this; right?

10 A The last e-mail references that, yes.

11 Q And you respond near the top of the e-mail chain, you  
12 refer to saying, "Nice work. We need to be sure that we are  
13 aggressive and timely on all of these." Did I read that  
14 correctly?

15 A Yes.

16 Q And by "all of these," you mean in the case where  
17 merchants who accept American Express are working with your  
18 competitors and preferencing?

19 A Where they have preference campaigns, which is against  
20 our policy, absolutely.

21 MR. HAMER: Your Honor, this would be a good  
22 breaking point.

23 THE COURT: We will take one hour for lunch. I  
24 remind the witness not to discuss his testimony with anyone.  
25 See you in an hour.

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1 We have a few matters to do right now.

2 (Luncheon Recess Taken at 1:00 p.m.)

3 (Matter continued on the next page.)

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1 THE COURT: I remind the witness that he is still  
2 under oath.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: You may continue.

5 MR. HAMER: Thank you.

6 CROSS-EXAMINATION (CONTINUED)

7 BY MR. HAMER:

8 Q Before we move on to other topics, I want to return to  
9 coverage just for a moment. First of all, let me return you  
10 to the exhibit which is marked PX 2725, and we were on page  
11 644 of that document.

12 A I'm sorry. Is that -- which binder?

13 Q This is in the white binder, PX 2725. Do you have it  
14 with you?

15 A Yes.

16 Q And again, this shows at the bottom with coverage for  
17 different cities, and on the -- on the bar charts it shows the  
18 spend in those different cities; right?

19 A Is that Slide 9 or page 9?

20 Q It's Slide 9, page 644.

21 A Yes.

22 Q Okay. So San Francisco is listed in the percentage that  
23 is in that box on the third bar; right?

24 A Yes.

25 Q Okay. And San Francisco has that amount or higher today;

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1 right? This is 2010, so the amount shown there or higher is  
2 the LIF amount for San Francisco; is that fair?

3 A I'm sorry. This is the calculation at this point in  
4 time.

5 Q Which is 2010; right?

6 A Yes -- or I don't know if it's 2010, but the report was  
7 made in -- or the report out was 2010. I don't know if it  
8 measured 2009 or 2010.

9 Q Okay. And in this time frame, you had continued to  
10 pursue measures to expand coverage in the United States;  
11 right?

12 A Yes.

13 Q Okay. And so is it true that San Francisco's LIF  
14 coverage is the amount shown here or higher today?

15 A I have no idea.

16 Q It's certainly not true that San Francisco's LIF coverage  
17 is 50 percent; right?

18 A I don't know. I don't think it is, but I have no idea.  
19 I haven't run the business in quite some time. Again, this is  
20 a LIF, not an active LIF, right.

21 Q As of this time frame, San Francisco's LIF coverage was  
22 not 50 percent; right?

23 A Correct. It was -- the best I know, it was what was  
24 represented here.

25 Q Okay. Thank you. Let me ask you again about the

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1 difference between location coverage and spend coverage.

2 A Okay.

3 Q And let's imagine there's a VMA that only has two  
4 merchants, one very large merchant like Wal-Mart and one like  
5 your example, a florist. Are you with me?

6 A Okay.

7 Q So assume that American Express doesn't -- is not  
8 accepted at the florist but is accepted at Wal-Mart. Does  
9 that make sense?

10 A Yes.

11 Q Okay. And assume also that 99 percent of credit card  
12 spend in that area is at Wal-Mart, not at the florist.

13 A Okay.

14 Q Does that make sense? So in that example, American  
15 Express's LIF coverage in that area would be 50 percent;  
16 right?

17 A I just want to make sure. Two merchants in the entire  
18 market?

19 Q Exactly.

20 A Just two. LIF coverage would be 50 percent, yes.

21 Q But the spend coverage if American Express is accepted at  
22 the large merchant would be 99 percent?

23 A If 99 percent of all plastic spend is at that one  
24 Wal-Mart --

25 Q Yes.

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1 A -- or that one location, then the spend coverage would be  
2 99 percent.

3 Q Thank you. So you talked a little bit this morning with  
4 Mr. Orsini about co-brand deals and co-brand negotiations. Do  
5 you recall that?

6 A Yes.

7 Q I want to go back to a document you were looking at.  
8 This is PX 0999, which is in the black binder.

9 A I'm sorry. PX?

10 Q PX 0999. Do you have it there?

11 A I do, yes.

12 Q Turn with me to page 041.

13 A I just want to make sure. So I'm looking at -- yes.

14 Q Page 041, the typed line says, "Co-Brand Best Practices  
15 Network Contribution Principal."

16 A Yes.

17 Q And, again, this is a document that summarizes American  
18 Express's co-brand economics; is that right?

19 A I don't know if it -- if it talks about the economics.  
20 It just talks about best practice in terms of going --  
21 internally aligning before we went to talk to the merchant.

22 Q Okay. If you look at the first bullet on page 041, it  
23 says, "An issuer co-brand relationship is independent from the  
24 card acceptance relationship and needs to support its own  
25 value proposition." Did I read that correctly?



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1 A Yes, you did.

2 Q And if you look at the fourth bullet down, it says, "The  
3 GMS contribution should not be made in the form of a reduction  
4 in the DR" -- that's discount rate; right?

5 A It is, yes.

6 Q -- "to the co-brand partner, because, one, pricing  
7 integrity is central to containing spillover in a blank dollar  
8 global industry; and second, discount rate reduction impacts  
9 all issuers on the network and leads to cross subsidies among  
10 products, issuers and markets." Did I read that correctly?

11 A Yes.

12 Q I want to ask you a little bit more about the Walgreens  
13 events that you described earlier today.

14 A Okay.

15 Q And you went through a bit of that chronology. I want to  
16 go through a little bit more of it with you.

17 You said in your direct exam that Walgreens wanted a  
18 lower rate from American Express; right?

19 A Yes.

20 Q And you were personally involved; correct?

21 A I was, yes.

22 Q And we've heard testimony about finance people and  
23 marketing people at merchants. You were dealing with the CEO  
24 of Walgreens; right?

25 A And the CFO.

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1 Q Okay. You dealt with both of them; right?

2 A Yes.

3 Q You talked about the offers that had been made at  
4 different points in time, which you described as rich offers;  
5 correct?

6 A Yes.

7 Q And --

8 A I described some of them as rich offers, yes.

9 Q But those offers were not accepted by Walgreens. They  
10 didn't view them the same way you did; right?

11 A Ultimately, they did accept those offers.

12 Q Before the cancellation events?

13 THE COURT: No. After January 14th, they accepted  
14 an offer. Are you before January 14th or on or after  
15 January 14th? I think that's the confusion. So let's get  
16 that -- get the question specified.

17 MR. HAMER: Thank you, Your Honor.

18 Q Before the cancellation letter that you described today,  
19 do you recall that testimony earlier today?

20 A The original -- the initial cancellation letter or --

21 THE COURT: In December?

22 Q Yes, the December 2004 letter.

23 A There were -- there were -- I'm sorry. There were --  
24 there were a couple letters, I think, in December, I believe.

25 Q Let's -- let me just withdraw the question and we can go

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1 through in a little more detail.

2 First, let me take you back to September 2004; okay,  
3 in that time frame? Let me show you a document --

4 A Okay.

5 Q -- that I want to ask you about. If you can turn with  
6 me, please, in your white binder to Exhibit PX 0426. This is  
7 a slide deck entitled "American Express and Walgreens Company  
8 Discussion of Sales at Risk," John Theiss, T-h-e-i-s-s,  
9 September 16th, 2004.

10 First of all, Mr. Glenn, John Theiss was a  
11 vice-president in your organization at that time?

12 A Yes. He worked for, I think, Paul Dottle, at the time,  
13 who reported to me.

14 Q And Mr. Theiss was someone who was responsible for the  
15 Walgreens relationship?

16 A Yes. He had folks under him who had direct  
17 responsibility, and he oversaw a number of merchants, but  
18 Walgreens was one of them.

19 Q Okay. And he was knowledgeable about the events that you  
20 described earlier today; right?

21 A I believe he was, yes.

22 Q Okay. And he was familiar with the details of American  
23 Express's sales at Walgreens at that time; right?

24 A Yes.

25 Q Okay. In this document, if you turn with me to page

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1 649 --

2 A Okay.

3 Q -- the third page, it indicates at the very top, first of  
4 all, the heading says "AXP Loyalist Segments at Walgreens,"  
5 and then it goes on to say, "Hard number research indicates  
6 strong loyalty to American Express cards and the importance of  
7 card acceptance in chain drug stores with 2004 AXP or Amex  
8 charge volume at Walgreens forecasted that blank million  
9 dollars over blank million of sales are at risk if card  
10 acceptance is canceled." Did I read that correctly?

11 A Yes.

12 Q And if you turn to the next page, 650 --

13 THE COURT: This is redacted. Can I put it up?

14 MR. HAMER: The redacted version can be published.

15 Thank you, Your Honor.

16 Q On the page ending in 650, there's a slide entitled  
17 "Interpreting the Research: Walgreens Sales at Risk." Do you  
18 see that?

19 A Yes.

20 Q The first line says, "AXP or Amex has commissioned  
21 research to understand the insistence of key cardmember  
22 populations and specifically the impact within the drug store  
23 industry of card non-acceptance." And it lists some figures.

24 And then if you look at the next page, beginning at  
25 651, also titled "Walgreens Sales at Risk," it says, "In

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1 total, nearly blank million or blank percent of Walgreens'  
2 charge volume would be at risk if American Express were no  
3 longer accepted." Did I read that correctly?

4 A Yes.

5 Q And were these figures communicated to you at Walgreens  
6 in September 2004?

7 A No, I don't -- I don't know if this was a deck that -- or  
8 a presentation that went into Walgreens, but we did talk. And  
9 even in my letters to Mr. Rein in discussions, I talked about  
10 our loyal cardmember base and based on the research.

11 Q Okay. And do these numbers seem consistent with the  
12 numbers that you recall from that time frame?

13 A I don't know if I was descriptive about the percentages  
14 in my discussions with him, but I did talk about loyal  
15 cardmembers.

16 Q Okay. Thank you.

17 MR. HAMER: Plaintiffs offer PX 0426 into evidence.

18 MR. ORSINI: No objection, Your Honor.

19 THE COURT: All right. PX 0426 is received in  
20 evidence.

21 MR. HAMER: Thank you, Your Honor.

22 (Plaintiff Exhibit 0426 received in evidence.)

23 Q You talked a little bit, Mr. Glenn, about the planning  
24 you were making in the event Walgreens did cancel. Do you  
25 recall that?

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1 A Yes.

2 Q Let's talk a little bit more about those plans. Your  
3 team developed contingency plans to steer Walgreens' customers  
4 from Walgreens to Walgreens' competitors; right?

5 A Our -- the teams, in the event of cancellation, had plans  
6 so that our cardmembers could shop at other locations, because  
7 Walgreens no longer accepted the card. So it wasn't steering;  
8 it was telling them where they could use their card.

9 Q Your objective was to make plans so that if Walgreens  
10 canceled, Walgreens' customers who held Amex cards would be  
11 encouraged to use their Amex card at Walgreens' competitors;  
12 right?

13 A Well, what I would say is that we had plans so that our  
14 cardmembers would know where they could shop and use their  
15 card at other drug stores.

16 Q Let's look at another document in your binder, PX 1164.

17 A Same binder?

18 Q This is the white binder. I'm sorry, I gave you the  
19 wrong number. One moment. That is the correct number,  
20 PX 1164.

21 A Okay.

22 Q This is an e-mail from William Glenn to Michael Saunders,  
23 S-a-u-n-d-e-r-s; subject, Walgreens, Jeffrey Rein, R-e-i-n,  
24 information --

25 A Excuse me. Yes.

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1 Q -- dated October 13th, 2004.

2 MR. HAMER: And plaintiffs offer PX 1164 into  
3 evidence.

4 MR. ORSINI: No objection.

5 THE COURT: PX 1164 is received in evidence.

6 (Plaintiff Exhibit 1164 received in evidence.)

7 Q And, Mr. Glenn, this is an e-mail chain that included  
8 you; correct?

9 A Yes.

10 Q If you look down on the second page of this exhibit, the  
11 one ending in 772, there's a heading that says "Contingency  
12 Plans." Do you see that?

13 A Yes.

14 Q And it says, "Here are the key components and next steps  
15 for our contingency plans if Walgreens were to cancel."

16 And these are plans that were being forwarded by  
17 Mr. Saunders to you; right?

18 A Yes.

19 Q Who is Mr. Saunders?

20 A He had responsibility for -- I believe for some of the  
21 retail customers. I don't remember whether he reported to  
22 John Theiss or Paul Dottle; but, ultimately, Paul Dottle had  
23 responsibilities for this.

24 Q Thank you. Let's go through a couple of these. So the  
25 beginning of this section under contingency plans, it says,

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1 "Aggressive Marketing to Current Walgreens' Shoppers." The  
2 first item is "Offer compelling MR." And that means  
3 Membership Rewards; right?

4 A It does, yes.

5 Q "Offer compelling Membership Rewards and non-Membership  
6 Rewards incentives to current Walgreens shoppers to get them  
7 to switch to an alternative drug store"; is that right?

8 A Yes.

9 Q A little bit farther down -- well, the next line says,  
10 "Targeted marketing programs/incentive details would vary  
11 based on shopper loyalty to Walgreens. For example, CMs" --  
12 that's cardmembers; right?

13 A Yes.

14 Q -- "currently spending at Walgreens exclusively will  
15 require a more robust incentive to switch as well as a program  
16 structure designed to incent repeat visits at a competitor."

17 Did I get that right?

18 A Yes.

19 Q That's a Walgreens competitor; right?

20 A Yes.

21 Q Okay. Next listed is, "Partner with specific competitors  
22 such as CVS, Rite Aid, Brooks, Longs, et cetera, to drive  
23 business away from Walgreens in their priority markets,  
24 Florida, Texas, Illinois, New York, Arizona, NC, among  
25 others."



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1           Next, "Develop platform concepts to drive  
2 cardmembers to any drug store except Walgreens."

3           A little farther down, it says, "Suggested programs  
4 concepts include sweepstakes, dollar off next purchase at a  
5 competitor, bonus Membership Rewards points, pre-paid cards  
6 for use in drug" -- I assume that means stores. Did I read  
7 that correctly?

8 A     In drug -- it doesn't say -- for use in drug.

9 Q     It looks like the sentence cuts off there in the e-mail;  
10 is that right?

11 A     Yes.

12 Q     But did I read those contingency plans correctly?

13 A     You mean all of them?

14 Q     Or the ones that I read, did I read those correctly?

15 A     Yes.

16 Q     There are many others here; right?

17 A     Yes.

18 Q     These were, in fact, considered by American Express in  
19 the event of Walgreens' cancellation; right?

20 A     If Walgreens canceled acceptance, right. And different  
21 words are used here, but the objective was to make sure our  
22 cardmembers knew -- our cardmembers knew that they would have  
23 other locations where they could use their card. Because, as  
24 I said before, acceptance is critically important; perceptions  
25 of coverage, very important. And this was a big cancellation

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1 threat; right?

2 Q So if we look back at the first sentence I read under  
3 "Aggressive Marketing to Current Walgreens Shoppers," based on  
4 your testimony about the importance of the anti-steering rules  
5 to you and to American Express, I take it that if Walgreens  
6 offered incentives to its shoppers to get them to switch to an  
7 alternative credit card network, you would have a problem with  
8 that; right?

9 A If it's a nondiscrimination point of sale, right. We're  
10 not disparaging Walgreens here. We're reaching out to our  
11 cardmembers to give them -- and make -- give them an  
12 opportunity to spend someplace else.

13 Q None of these measures that I just went through is  
14 disparaging Walgreens; right?

15 A I don't believe it is.

16 Q There's nothing here that would harm Walgreens' brand by  
17 doing this; right?

18 A It's not -- not our intent at all.

19 Q Your intent is just to move volume from Walgreens to  
20 Walgreens' competitors; right?

21 A Well, there would be no volume. So once they cancel,  
22 it's not shifting or moving volume, right. It's protecting  
23 our cardmember base where they have a place to spend.

24 Q And at the time you were discussing this -- you were in  
25 October; right? -- Walgreens had not yet canceled; correct?

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1 A They hadn't canceled yet.

2 Q Look at the last sentence of this e-mail on page 773. It  
3 says, "If we decide" -- "we" being Amex -- "decide that we  
4 want to terminate our relationship with Walgreens before  
5 January 1st, 2005 (12/1 is suggested) we can do so with  
6 30 days' written notice." Did I read that correctly?

7 A You did. Right.

8 Q Did you consider terminating Walgreens before the  
9 termination notice you got --

10 A I never considered terminating Walgreens. And again,  
11 this is the team laying out some options for us.

12 Q And these were options that you received from  
13 Mr. Saunders; right?

14 A Yes.

15 Q Okay. Let me look at another document with you.

16 THE COURT: Could -- let me just ask this: Could  
17 Walgreens have canceled their agreement with you on 30 days'  
18 written notice before the end of the contract period, if you  
19 know?

20 THE WITNESS: I don't -- I don't remember. I think  
21 30 days may have been both parties had the right to terminate  
22 30 days, but, Your Honor, I don't remember the specific  
23 contract.

24 THE COURT: Do you recall ever having terminated a  
25 merchant in the middle of a contract period during your

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1 tenure?

2 THE WITNESS: I don't.

3 THE COURT: All right. Thank you.

4 Q Mr. Glenn, I want to show you another document, PX --

5 THE WITNESS: Your Honor, some of the contracts are  
6 evergreen, right. They don't have a start and an end date.

7 THE COURT: No, I understand. I understand. But if  
8 it's a contract with a termination date, it doesn't -- I'm  
9 just curious whether there are circumstances that you can  
10 recall where you were compelled or desired and actually did  
11 terminate before the end of the contract period.

12 THE WITNESS: Not outside of the -- what we've  
13 agreed to in the contract.

14 THE COURT: I see. Okay. Thank you.

15 Q Mr. Glenn, turn, please, to PX 0902 in the white binder.  
16 This is an e-mail from William Glenn to Jo Ann Stonier,  
17 S-t-o-n-i-e-r. And the subject line is "CVS Below the Line  
18 Offers," December 21st, 2004.

19 MR. HAMER: Plaintiffs offer PX 0902 in evidence.

20 MR. ORSINI: No objection.

21 THE COURT: 0902 is received in evidence.

22 (Plaintiff Exhibit 0902 received in evidence.)

23 Q Do you have that in front of you, Mr. Glenn?

24 A I do, yes.

25 Q Okay. So this document is an e-mail -- the embedded

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1 document is an e-mail to you; right?

2 A I'm sorry. The one underneath?

3 Q Yeah. There's an e-mail --

4 A Yes.

5 Q -- from Kathy Senior, S-e-n-i-o-r, to you dated

6 December 20th, 2004. Do you see that?

7 A Yes.

8 Q And she's discussing three possible executions of a below  
9 the line direct mail program with CVS. Do you see that?

10 A Yes.

11 Q And it says, "As we discussed, number one would need  
12 Ken's approval." Is that Ken Chenault?

13 A Yes.

14 Q Number 1 says, "Bring in your new or transferred  
15 prescription to CVS Pharmacy and receive a \$25 CVS gift card."  
16 Did I read that correctly?

17 A You did.

18 Q Is that a promotional initiative you were considering to  
19 address the possibility of Walgreens' cancellation?

20 A Yes.

21 Q Okay. Let's look at another document. Well, before we  
22 leave this, Mr. Glenn, if CVS offered a 25-dollar CVS gift  
23 card for use of Discover, that would violate your  
24 anti-steering rules; right?

25 A Say that? I'm sorry.

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1 Q If CVS offered its customers a 25-dollar gift card if  
2 they used their Discover card, that would violate your  
3 anti-steering rules; right?

4 A I think we weren't -- you know, the anti-steering rules  
5 are for sustained steering of point of sale, not promotional  
6 items. You know, the other -- I just want to point out that I  
7 believe Jo Ann was in our privacy office at the time, so all  
8 the ones we're considering in terms of these promotions and  
9 executions we wanted to make sure that we weren't violating  
10 privacy laws or the commitments we have for merchants in terms  
11 of how we market in the drug stores as well. So that's why  
12 you see Ken's name here and Jo Ann Stonier, right, not only to  
13 protect sort of the consumers, but also how we market with  
14 merchants in general.

15 Q So the types of marketing initiatives that were discussed  
16 in the prior exhibit, because it involves a drug store, have  
17 particular privacy concerns? Is that what you're saying?

18 A The drug store -- yes, we do, right, in terms of  
19 personally identified information and to make sure we're fully  
20 protecting that.

21 Q And you had your privacy team involved in considering  
22 your response to Walgreens?

23 A Yes. I believe Jo Ann was in the privacy compliance  
24 area.

25 Q Let me show you another document, sir, the same binder,

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1 the white binder. It's PX 0934. This is an e-mail from John  
2 Theiss to Paul Dottle December 14th, 2004, subject line  
3 Walgreens contingency plans.

4 MR. HAMER: Plaintiffs would offer PX 0934 into  
5 evidence.

6 MR. ORSINI: No objection.

7 THE COURT: PX 0934 is received in evidence.

8 (Plaintiff Exhibit 0934 received in evidence.)

9 Q The first sentence says, "I" -- and that's Mr. Theiss;  
10 right? Correct?

11 A Yes.

12 Q So Mr. Theiss says, "I have spoken with Bill multiple  
13 times this morning. The team is preparing a timeline and  
14 associated plan that I will share with Bill."

15 Are you the "Bill" he's referring to?

16 A I think I am.

17 Q Because you were involved at this time; right?

18 A Oh, December -- absolutely, yes.

19 Q Okay. Go a little farther down in this document.  
20 There's a paragraph that begins "Additionally." Do you see  
21 that?

22 A Yes.

23 Q It says, "Additionally, we are working with the agency  
24 and the team on deciphering which markets and which accounts  
25 would make sense approaching for a campaign to shift share

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1 away from Walgreens. We also found that we will have the  
2 ability to communicate directly to Walgreens' shopper list so  
3 we can market directly where it hurts them the most."

4 Did I read that correctly?

5 A Yes.

6 Q Okay. This was not about protecting your cardmembers at  
7 this point; right? It was about hurting Walgreens?

8 A It's all about protecting our cardmembers. I don't agree  
9 with you.

10 Q The language in the e-mail says, "so we can market  
11 directly where it hurts them the most."

12 Did I get that correct?

13 A You did. That's John Theiss's, right, language in an  
14 e-mail talking about the marketing campaigns. As I said  
15 earlier, we're not shifting share. There is no share once  
16 they cancel. It's about protecting our cardmember spend.

17 Q Okay. Thank you. Let me show you another document,  
18 PX 0438. This is an e-mail chain. And at the top of the  
19 chain is an e-mail from John Theiss to Sumathi, S-u-m-a-t-h-i,  
20 Laterza, L-a-t-e-r-z-a, re: Walgreens' cancellation  
21 contingency plan ideas, October 9th, 2004.

22 MR. HAMER: The plaintiffs offer PX 0438 into  
23 evidence.

24 MR. ORSINI: No objection.

25 THE COURT: PX 0438 is received in evidence.



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1 (Plaintiff Exhibit 0438 received in evidence.)

2 Q If you look on the bottom of the first page of this  
3 exhibit, Mr. Glenn, there's an e-mail from Sumathi Laterza.  
4 Do you see that?

5 A I do. I'm not copied on any of these.

6 Q You're not listed on this e-mail chain; correct?

7 A I'm not.

8 Q Mr. Theiss is listed; right?

9 A He is, yes.

10 Q He was the person under your direction who was involved  
11 in these events; right?

12 A Working for Paul Dottle.

13 Q If you look down at the bottom of the first page, it's  
14 talking about incentives. If you look at the sentence that --  
15 well, let me just read this whole section here.

16 It says, "Marketing Awareness Communications.  
17 Awareness mailing to all Walgreens' shoppers, reminding them  
18 to use their card in drug stores listing key drug merchants in  
19 their markets. Consider a special message to heavy Walgreens  
20 shoppers and mentioning that we're sorry they can't use their  
21 card in Walgreens since these cardmembers will be most  
22 impacted by the change and most likely to stick with Walgreens  
23 even if they can't use American Express. Provide them with an  
24 incentive to go somewhere else. The incentive structure  
25 should be designed to encourage multiple visits to a

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1 competitor to get them to change behavior, XXX points per  
2 transaction, or a huge amount of bonus points to be awarded  
3 after they've spent XXX times at a competitor."

4 Did I read that correctly?

5 A You did, yes.

6 Q And then on the next page, 328, about eight or ten lines  
7 down, it says, "Consider a program to get people to switching  
8 prescriptions to another store. (Privacy issues with this  
9 idea)." Did I read that correctly?

10 A I think you did, but I didn't follow exactly where you  
11 were on it.

12 Q Okay. The line starts "Consider a program." It says,  
13 "Consider a program to get" --

14 A I see.

15 Q Okay. And I got that correctly?

16 A You did, yes.

17 Q And there are others listed here, but these were all  
18 ideas that were considered by your team in response to the  
19 potential for Walgreens canceling?

20 A Consistent with the document we read before. I'd also  
21 tell you, during this period of time we were negotiating like  
22 crazy with Walgreens. You know, as I said earlier, this is a  
23 big deal for us; right? The last thing we wanted was for them  
24 to cancel. But at the same time, as we talked about, coverage  
25 and perceptions of coverage are so important. We were

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1 protecting our cardmembers.

2 Q Let's turn to Exhibit PX 1814. This is a --

3 A I'm sorry?

4 Q PX 1814.

5 MR. HAMER: And plaintiffs offer PX 1814 into  
6 evidence.

7 MR. ORSINI: PX --

8 MR. HAMER: 1814.

9 MR. ORSINI: No objection, Your Honor.

10 THE COURT: All right. PX 1814 is received in  
11 evidence.

12 (Plaintiff Exhibit 1814 received in evidence.)

13 Q So if you look on the page ending in 257, there are a  
14 couple of mockups of an advertisement; is that right?

15 A Of an offer, promotional, right. Yes.

16 Q Of a promotional offer; is that right? This -- as we saw  
17 before in the prior exhibit, you had considered a CVS gift  
18 card to shift Walgreens' customers to CVS; right?

19 A I think it said a gift card. It talked about promotional  
20 marketing programs.

21 Q Was this mockup, which is Exhibit PX 1814, part of that  
22 planning process for the possibility of Walgreens canceling?

23 A I believe it was, yes.

24 Q In the bottom left, you have a coupon or offer here that  
25 says "Save \$4 on a \$20 purchase when you use your American

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1 Express card." Did I read that correctly?

2 A Yes.

3 Q Again, if you -- if CVS were doing this for MasterCard  
4 and it were not a short-term promotion -- as you pointed out,  
5 you permit short-term promotions sometimes but not longer term  
6 promotions. If CVS were doing a longer term gift card  
7 promotion just like you've mocked up here but it was towards  
8 MasterCard, not American Express, that would violate your  
9 anti-steering rules; right?

10 A I don't know. We -- you know, all of these things we  
11 negotiate what competitors do and what they can't do, right.  
12 And sustained -- or a point of sale steering allowed  
13 continuously violates the agreement.

14 We do allow promotional programs like official card  
15 programs, not preference campaigns. But, certainly, we've  
16 worked with plenty of merchants in terms of trying to  
17 accommodate their objectives and promotions.

18 Q As you testified before, you also have enforced your  
19 rules against merchants who are steering in ways that you  
20 don't think comply with it; right?

21 A After we try really hard. Because I think you saw from  
22 some of the documents that this was after a series of  
23 negotiations and meetings, yes.

24 Q Now, in addition to shifting cardmembers from Walgreens  
25 to Walgreens' competitors, you also considered working to

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1 shift American Express's employees who are on a prescription  
2 drug plan with American Express from Walgreens to Walgreens'  
3 competitors; right?

4 A I don't know if it's shifting, but we wanted to make sure  
5 that our cardmembers had a place to fill their prescriptions  
6 -- our employees, right. Just like any brand, you want your  
7 employees using your brand. We wanted the same.

8 Q And this time frame, in 2004, Walgreens was an option for  
9 the prescription drug plan for American Express employees;  
10 right?

11 A I believe they were, yes.

12 Q And a substantial number of American Express employees  
13 exclusively purchased at Walgreens at that time; right?

14 A I don't remember the numbers. I know we had employees  
15 purchasing their prescriptions at Walgreens.

16 Q Okay. Well, we'll look at a couple numbers in a moment.  
17 But you were making plans to drop Walgreens from American  
18 Express's prescription drug coverage; correct?

19 A I believe that's how you characterize it. I don't  
20 remember the exact details. But, in essence, just enabling  
21 our employees to fill their prescriptions elsewhere.

22 Q Thank you. Let's look at a document on this, PX 0886,  
23 also in the white binder.

24 A I'm sorry. PX --

25 Q 0886. This is an e-mail from David House to William

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1 Glenn, re: Further Walgreens --

2 A I'm sorry. It's right in front of me. Sorry.

3 Q Do you have it?

4 A No, I've got it.

5 Q Okay. The subject line is "Further Walgreens Analysis,"  
6 January 11th, 2005.

7 MR. HAMER: Plaintiffs offer PX 0886 into evidence.

8 MR. ORSINI: No objection, Your Honor.

9 THE COURT: 0886 is received in evidence.

10 (Plaintiff Exhibit 0886 received in evidence.)

11 Q I want to direct you first to the e-mail from Jim Dwyer  
12 to Paul Dottle, copying you, in the middle of the first page.

13 A The first page.

14 Q Do you see that?

15 A Yes.

16 Q And this is in January, January 10th of 2005, right at  
17 the peak of the cancellation events that you described in your  
18 direct exam; right?

19 A Four days away.

20 Q Okay. So if you look on the top of the page ending in  
21 655, there's a sentence that begins, "This is an estimate and  
22 Medco shared this information for our knowledge only.  
23 Approximately" --

24 MR. HAMER: Is there any reason these numbers can't  
25 be stated publicly? They're not redacted, so I just want to

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1 make sure before I mention them, if counsel had an objection.

2 MR. ORSINI: I don't see a reason. I don't know if  
3 Walgreens would see a reason, the volume at that time on  
4 particular types of transactions for particular employees, but  
5 I don't have an objection.

6 Q "Approximately 11,639 Amex members have a pattern of  
7 exclusively using Walgreens. It would suggest a need for a  
8 transition period." Did I read that correctly?

9 A Yes.

10 Q And that's consistent with your understanding of how many  
11 Amex members exclusively used Walgreens?

12 A I do have a memory of that number.

13 Q Okay. The e-mail below this from Gretchen Lennon,  
14 L-e-n-n-o-n, to Jim Dwyer, talks about the elimination of  
15 Walgreens from the network. Do you see that --

16 A Yes.

17 Q -- the first sentence?

18 And then if you go to page 656, the first full  
19 paragraph, it says, "Per Medco, our 2005 mail incentive will  
20 likely result in a 47 to 50 percent reduction in Walgreens  
21 spend by Amex members." Do you see that?

22 A Yes.

23 Q And that's associated with this plan for changing your  
24 prescription drug options; right?

25 A Yes, I believe it is.

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1 Q Okay. And then if you go back to the first page, you  
2 forwarded this e-mail to David House; right?

3 A I did.

4 Q And Mr. House was your boss at that time; right?

5 A Yes.

6 Q Okay. And you say, "Regarding Walgreens, review quickly  
7 and I'll give you an overview tomorrow"; right?

8 A Yes.

9 Q So you were involved in these events personally; right?

10 A Not -- not doing the analytics, but certainly getting the  
11 report out, yes.

12 Q Did you request the analytics?

13 A I don't remember who first requested it; but, obviously,  
14 the team did it and reported.

15 Q Okay. Mr. House responds to you, "Bill, great stuff,  
16 questions." And then in the last part of his e-mail, he says,  
17 "This is going to hurt Walgreens' bottom line. I doubt that  
18 they knew this." Did I read that correctly?

19 A Yes.

20 Q He doesn't mention anything here about protecting  
21 Walgreens or American Express cardholders; correct?

22 A Not in this e-mail.

23 Q Okay. So Walgreens did not ultimately cancel American  
24 Express acceptance; right?

25 A I think they did. I think --



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1 Q Very briefly; correct?

2 A But they did cancel acceptance.

3 Q What was the duration of that cancellation?

4 A Between, I guess, midnight and sometime after my phone  
5 call that morning to Mr. Rein.

6 Q Let me show you another document, which I'm going to have  
7 to hand to you. It's PX 0142 -- I'm sorry. The number of  
8 this is PX 0446. This is an e-mail from Stephen Samoy to  
9 Cheryl Kiernan, K-i-e-r-n-a-n; subject Walgreens,  
10 January 14th, 2005.

11 MR. HAMER: The plaintiffs offer PX 0446 into  
12 evidence.

13 MR. ORSINI: No objection.

14 THE COURT: PX 0446 is received in evidence.

15 (Plaintiff Exhibit 0446 received in evidence.)

16 Q Okay. Mr. Samoy was in your organization; right?

17 A Yes.

18 Q And he was personally involved in the Walgreens events?

19 A Yes.

20 Q Okay. Mr. Samoy says to Ms. Kiernan, "Thanks. They  
21 actually settled for a deal that was not quite as rich for  
22 them as the one we had back in November/December. Go figure.  
23 I believe it was the culmination of several events that  
24 changed their mind, i.e., two days ago at their annual  
25 stockholders meeting many shareholders expressed

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1 dissatisfaction to their board re the cancellation of Amex.  
2 They must be receiving major customer complaints at the store  
3 level. CVS expressed a partnership with us."

4 Did I read that correctly?

5 A Yes.

6 Q And the November/December deal referenced in the first  
7 sentence was the -- one of the deals that you were describing  
8 earlier with Mr. Orsini; right?

9 A I'm sorry. Say that again.

10 Q The deal referenced in the first sentence from  
11 November/December was one of the deals that you had been  
12 discussing in the prior documents this morning; right?

13 A Well, this is Stephen Samoy's evaluation, right, who  
14 reports to somebody, who reports to somebody, ultimately, his  
15 interpretation. Ultimately, as you saw from all the  
16 discussions, Mr. Rein had to agree. I don't -- I don't think  
17 it was worse than the deal we put on the table. Obviously, it  
18 met, you know, his objectives, right. So this is Stephen  
19 Samoy -- and I actually don't know who Cheryl is, but sending  
20 his interpretation, and he could have looked at one part of  
21 the deal; right? So...

22 Q Mr. Samoy was the client manager for Walgreens at this  
23 time; right?

24 A I think he was -- he was on point at Walgreens.

25 Q Let's look at another person's reaction to these events.

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1 A Okay.

2 Q I'm going to introduce PX 0142. Again, this is one I'm  
3 going to have to hand to you.

4 MR. HAMER: May I approach, Your Honor?

5 THE COURT: Yes, you may.

6 Q This is an e-mail from Ronald Schultz to Jose Morabito,  
7 M-o-r-a-b-i-t-o, a January 25th, 2005 press release,  
8 "Walgreens reaches agreement to continue accepting American  
9 Express cards."

10 Who is Mr. Schultz at this time?

11 A I don't -- he worked in the organization. I don't  
12 remember what his role was specifically.

13 Q He was in the pricing organization; right?

14 A Jose Morabito was, I think -- well, Ron Schultz was in  
15 the pricing organization, right. So I just don't remember at  
16 this particular time where.

17 Q Okay. Mr. Schultz says, "Our customers voiced their  
18 dissatisfaction with Walgreens' decision, and that is what  
19 caused them to change their mind. We did not offer them  
20 anything additional to cause them to change their position. I  
21 understand that complaints were also voiced to the Board of  
22 Directors at a shareholder meeting. One correction per below.  
23 I predict they will reach the next CV band within a year, not  
24 five."

25 And this is in response to a question from

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1 Mr. Morabito, saying, "What is the official answer to  
2 merchants who asked us what we did to avert the Walgreens  
3 cancellation?"

4 Did I read that correctly?

5 A Both of those, yes, you read correctly.

6 Q I want to switch topics and ask you a couple of questions  
7 about pricing.

8 You've already addressed that a bit this morning. I  
9 just have a few follow-up issues for you. First, I want to go  
10 back to the document we already looked at, PX 0905.

11 A I'm sorry. Yours --

12 Q This is in the white binder. It's 0905. This is already  
13 admitted. This is the Q and A script for your financial  
14 community presentation. Do you have that there?

15 A Yes. I would say that's the prep for. It wasn't a  
16 script, right? It was preparation for potential questions.

17 Q Thank you. This is your advanced preparation before  
18 meeting with the financial community at this time; right?

19 A Yes.

20 Q These are questions and answers that you prepared with  
21 your team before that; right?

22 A That were prepared for me.

23 Q Okay. So there's a section that's called "Discount  
24 Rate." Do you see that?

25 A Yes.

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1 Q There's a question at the bottom of page 926. It's  
2 asking about the trajectory of your discount rate premium.  
3 This is back in 2005; right?

4 A It was, yes.

5 Q Okay. The question is, "How can you maintain your  
6 discount rate premium when the trajectory is clearly moving  
7 south?"

8 Your answer: "As I mentioned earlier, the 2 to 3  
9 basis point decline in the past several years is an  
10 intention" -- does that mean intentional, I assume?

11 A Yes.

12 Q Okay. So the "decline in the past several years is an  
13 intentional move on our part fueled by our expanded presence  
14 in the non-T & E categories where the discount rates tend to  
15 be lower. And, importantly, the increases in our average  
16 spend per card clearly outweigh any decline in the overall  
17 rate."

18 That's referring to the change in mix of merchants;  
19 right?

20 A Yes, moving -- right, different categories have different  
21 discount rates, right, as we talked about.

22 Q And that change in mix was an intentional move, as you  
23 described; right?

24 A Well, we wanted to get coverage. I talked about that,  
25 right. We want every merchant and every industry to accept

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1 the card. So -- and then we align, as I said earlier, price  
2 with value, so merchants accept. And we can't force them to  
3 accept. They make a choice.

4 Q And as you described, that could affect the premium that  
5 you have over other networks; right?

6 A I'm sorry. Say that again.

7 Q That decision to change the mix put pressure on the  
8 premium that American Express has had over Visa/MasterCard;  
9 right?

10 A Well, as did Visa/MasterCard for a couple years raising  
11 prices.

12 Q Let's look at the next question. It says, "What happens  
13 when to your" -- I think it means -- the "to" is an error.  
14 So, "What happens when your premium discount rate" -- well,  
15 let me start over. It's not an error. It should be in there.

16 "What happens when to your premium discount rate  
17 when the bottom falls out of interchange?" I think there's an  
18 extra "when" in there.

19 Your answer is, "First of all, that's a  
20 hypothetical. There's been merchant pressure for a while now  
21 and associations" -- is that referring to Visa and MasterCard?

22 A Yes.

23 Q Okay. "They only responded with higher rates. We have a  
24 different model and a different approach to pricing. Also,  
25 our rates are not tied to interchange. And as I explained

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1 earlier, we have a variety of relationships with our merchant  
2 partners. I'm very confident in our ability to maintain our  
3 premium."

4 Did I read that correctly?

5 A You did, yes.

6 Q That's back in 2005 --

7 A This was not my response to those questions. You  
8 understand that; right? We talked about that; right? These  
9 were anticipated questions that would come up; right? So  
10 these were not the questions that were asked. I don't  
11 remember the questions that were asked. And it was fair for  
12 me, right, to start thinking about the questions.

13 Q These were answers prepared by your team so you could be  
14 prepared to answer questions that came up?

15 A Just general anticipated questions, right.

16 Q Before we leave this document, there is one more question  
17 on Walgreens. This same document at page 929 also has a  
18 question and answer about Walgreens, which is happening around  
19 this time; right?

20 A Actually, before that, right, because this is August of  
21 2005. So the Walgreens was --

22 Q Walgreens events were --

23 A -- January --

24 Q -- January --

25 A -- of 2005, right.

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1 Q So this is several months after the events; right?

2 A Yes.

3 Q You anticipated questions about Walgreens; right?

4 A Yes.

5 Q The bottom of page 929, the question, "Did you lower the  
6 rate for Walgreens or not?"

7 Answer: "We did not depart from our rate table in  
8 our discussions with Walgreens. As you may have read in the  
9 American Banker, one of their executives (Susan DeVries)  
10 admitted a couple of months ago that consumer reaction was a  
11 major reason for them to reconsider their decision to stop  
12 accepting the card. She said, 'There was consumer fury. They  
13 said, how dare you tell me how I should pay at Walgreens? We  
14 heard that loud and clear. In the end, we reached an  
15 agreement on terms that were mutually beneficial. Those terms  
16 are based on the value that our cardmembers bring to  
17 Walgreens.'"

18 And then I'll read the rest of this. "There was  
19 interest on both sides to see if we could continue card  
20 acceptance. We both wanted to allow customers to use their  
21 Amex cards when shopping at Walgreens. We were able to reach  
22 a longer term agreement that made sense for both of us and our  
23 mutual customers. As I said earlier, we used the same  
24 discount rate schedule for Walgreens that we use with other  
25 merchants in the industry."

SHERRY BRYANT, RMR CRR



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1 Did I get that correctly?

2 A Yes.

3 Q Let's go to PX 1447 in the white binder. This is a  
4 Bloomberg transcript of a 2009 discussion with investors. Do  
5 you have that with you?

6 A I do, yes.

7 Q Look on page 3, the third full paragraph. You briefly  
8 discuss value recapture. And this -- by the way, this is a  
9 transcript of your comments; right?

10 A I don't recall seeing it, but...

11 Q If you look on the first page, it has your name, William  
12 Glenn.

13 A Yes.

14 Q And on page 3, it's still part of your discussion; right?

15 A Yes.

16 Q The third paragraph says, "Additionally, this value-based  
17 model has enabled us to raise our discount rate in many  
18 industries. The term value recapture which we've used in  
19 these forums before reflects these activities. The slight  
20 decline in rate that you see is primarily the result of  
21 continued and intended change in mix."

22 Did I read that correctly?

23 A Yes.

24 Q Then you talk about that mix over time in the next  
25 paragraph. "I note that our discount rate has remained

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1 stable"; is that correct?

2 A The end of the next paragraph. I do see that, yes.

3 Q And if I can return you to the black binder, PX 0890.

4 A I'm sorry?

5 Q PX 0890 in Mr. Orsini's binder.

6 A Yes.

7 Q Turn, please, to page 338. There's a slide on the Amex  
8 discount rate in the U.S. Do you have it there?

9 A Page 25 -- 25?

10 Q Page 25 of the deck.

11 A Okay.

12 Q The Bates numbers end at 338. Looking at the speaker  
13 notes, it says, "In the U.S., our average discount rate has  
14 been declining by blank basis points per year. This is an  
15 intentional move on our part as we have expanded into everyday  
16 spend industries, such as supermarkets and mass merchandisers,  
17 where our value is not as proven. We, therefore, charge a  
18 lower rate. This shift from predominantly T & E to a more  
19 balanced industry mix has decreased our overall rate."

20 Did I read that correctly?

21 A You did, yes.

22 MR. HAMER: I don't believe this was moved into  
23 evidence, so plaintiffs would offer PX 0890 into evidence.

24 MR. ORSINI: No objection.

25 THE COURT: All right. PX 0890 is received in

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1 evidence.

2 (Plaintiff Exhibit 0890 received in evidence.)

3 THE COURT: What about PX 1447? Has that been moved  
4 in? I didn't see it with this witness.

5 MR. HAMER: The Bloomberg transcript has not been.  
6 We would offer that.

7 MR. ORSINI: No objection.

8 THE COURT: PX 1447 is received in evidence as well.  
9 (Plaintiff Exhibit 1447 received in evidence.)

10 THE COURT: Okay.

11 Q Let me show you another value recapture document. This  
12 is PX 0457 in the white binder.

13 A PX --

14 Q 0457. This is an e-mail from Jack Funda to Elizabeth  
15 Langwith, L-a-n-g-w-i-t-h, and others, August 6, 2008;  
16 subject, TEI BUR. And you see in the first line, it says,  
17 "Team TEI, attached is the TEI BUR doc when you meet with Ed  
18 and Bill. Are you the Bill referenced there on the first  
19 page?

20 A I believe I am. It says review with Ed Gilligan, but I  
21 would assume it would be me as well.

22 Q Okay.

23 MR. HAMER: Plaintiffs offer PX 0457 into evidence.

24 MR. ORSINI: No objection.

25 THE COURT: PX 0457 is received in evidence.

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1 (Plaintiff Exhibit 0457 received in evidence.)

2 Q If you look at 3518, the second page, the title is Travel  
3 and Entertainment Industry's Business Unit Review with Ed  
4 Gilligan. I just want you to look at a couple of pages with  
5 me.

6 This is discussing the -- in part, the value  
7 recapture issues in the travel and entertainment sector;  
8 right?

9 A Well, it also has a number of other items, as well.

10 Q Right. But, in part, it's discussing value recapture?

11 A There's a piece of it. I don't remember the document. I  
12 haven't seen this document, so...

13 Q Fair enough. So let's look at page 521, the executive  
14 summary. Number 4 says, "The discount rate is expected to  
15 increase by nearly blank basis points, from blank percent to  
16 blank percent." And then it references as a subpoint, value  
17 recapture continues in various segments listed that were all  
18 within T & E; right?

19 A That's what it says. I don't -- I don't remember ever  
20 seeing a forecast that it would increase, but that's what the  
21 document says.

22 Q Okay. Thank you. If you can turn, please, to page 536.  
23 There's a slide entitled "TEI Value Recapture Initiatives."  
24 The first line says, "Value recapture efforts have served as a  
25 means to drive growth with an expected blank million in total

GLENN - CROSS / HAMER

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1 contribution in 2009 versus a pre-value recapture in 2005  
2 baseline." Did I get that correct?

3 A Yes. That's a headline.

4 Q And then it lists on the far right column by year the  
5 cumulative benefit of value recapture in the travel and  
6 entertainment industries; right?

7 A Yes.

8 Q And those numbers, are they consistent with your general  
9 recollection of the success of the value recapture price  
10 increases at that time?

11 A Well, I think it's consistent with what we looked at  
12 earlier. There was a chart that showed without value  
13 recapture and with value recapture, right, what the revenue  
14 would be and the difference in revenue. And the reason it  
15 says means to drive growth is because, as I said earlier, it  
16 was an ability to align price with value and give us money to  
17 invest back into the business, to drive cardmember behavior  
18 and loyalty, right, because it's a competitive environment.  
19 So we needed to do that to make sure our merchant value  
20 proposition was strong and our cardmember value proposition  
21 was strong.

22 Q Let's look at page 538. It has more detail on the travel  
23 and entertainment value recapture initiatives. It looks  
24 specifically at the year 2008 on the left box; right?

25 A Yes.

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1 Q And it shows a series of basis point increases on  
2 particular merchants; is that right?

3 A Industries and merchants.

4 Q On the left, it shows particular merchants and it  
5 identifies what industry they're in; right?

6 A Yes.

7 Q Then it has a cumulative impact at the bottom right of  
8 that box?

9 A Yes. Well, it says dollar impact. I assume it's  
10 cumulative over a number of years.

11 Q And then on the right, it shows the projected value  
12 recapture targets for 2009, listing particular T & E merchants  
13 that were the targets of the next year's value recapture;  
14 right?

15 A Correct, when their contracts came up.

16 Q And it showed on the far right the expected dollar impact  
17 of those price increases for 2009; right?

18 A Yes. I was just looking at the footnote here.

19 Q Then if we go in the same document to page 553, there's a  
20 slide that talks about the restaurant industry specifically.  
21 And in the middle of that page, it mentions challenges. Do  
22 you see that?

23 A Yes.

24 Q And it says, "The industry is facing severe headwinds  
25 resulting in increased bankruptcies, canceled openings, shift

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4872

1 in franchising, increase in LT0s, value, venues, and multiple  
2 C-level changes."

3 Did I get that correct?

4 A Yes.

5 Q And you did, in fact, successfully implement restaurant  
6 value recapture in this time frame; right?

7 A Well, we did implement it. And I think what this speaks  
8 to is -- you know, one of the things we looked at prior to  
9 making a decision -- and I talked about that earlier, which is  
10 the state of the industry -- I mean, you know, the  
11 organization gets up every day and tries to keep merchants  
12 accepting and gaining new merchants.

13 If we didn't have to negotiate with merchants, if,  
14 in fact, they had to accept us, we wouldn't have an entire  
15 merchant organization; right? So planning is not only  
16 important, but our folks work -- wake up every day and they  
17 want to drive value to merchants, not threaten merchants, but  
18 negotiate with merchants. And it's so important to our  
19 business model and our people.

20 So, you know, I'm sorry, but this takes into account  
21 what situation the merchants are in, and we evaluate that and  
22 weigh really heavily about are we creating value.

23 And I talked earlier about the credibility of going  
24 to merchants and looking at where they are and the competitive  
25 environment, right, and the value we're creating, because the

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1 last thing we want to do is have merchants cancel or threaten  
2 to cancel.

3 Q Look at page 555. There's a reference --

4 A I'm sorry. 5 --

5 Q 555.

6 A Yes.

7 Q This is more detail on restaurant value recapture. And  
8 it says, "Following successful restaurant value recapture of  
9 blank million in 2007, we are now gearing up for RVR 2" --  
10 which is restaurant value recapture phase 2; right?

11 A I think so.

12 Q -- "which is set to deliver approximately blank billion  
13 by 2010."

14 Did I read that correctly?

15 A Yeah. I don't know what the blank billion. It could be  
16 total spend in the industry. I'm not sure.

17 Q And if you look at the embedded box on page 555, there's  
18 a PTI impact. Do you see that?

19 A Yes.

20 Q And it shows the number of accounts affected on the far  
21 right. Do you see that?

22 A Yes.

23 Q It says 287,539 restaurants were impacted by these value  
24 recapture price increases, at least with the Card Not Present  
25 fee; right?



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4874

1 A Right. I'm sorry. Can --

2 Q It's the far right column under PTI impact lists the  
3 number of merchants, number of accounts. Do you see that?

4 A Yes.

5 Q Does that list the number of accounts that were impacted  
6 by the restaurant value recapture?

7 A Or potentially -- potentially impacted. I believe that's  
8 the number, yes.

9 Q Thank you. So you talked a moment ago about your  
10 negotiations with merchants. I want to ask you about a couple  
11 of those. Let me point you to PX 0100, also in your white  
12 binder.

13 A PX 0 --

14 Q 100. And merchants have used the possibility of  
15 steering -- well, strike that.

16 If you can first look at the first page of this  
17 document. It's entitled Global Pricing and Review Management,  
18 2012 SQP review, October 12th, 2011. Is this a presentation  
19 that you received?

20 A I actually don't remember. Global Pricing and Review  
21 Management and GMAR; is that --

22 Q Yes.

23 A I may have received it. I don't remember.

24 Q In your role as president of Global Merchant Services,  
25 did you receive global pricing presentations from the pricing

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1 team?

2 A I did. This was close to my tenure ending, though, but I  
3 just -- as head of Merchant Services, but pricing did report  
4 to me.

5 Q Okay. Thank you.

6 THE COURT: Is this to be -- is it redacted or --

7 MR. HAMER: This one is -- make sure I'm correct  
8 about this. This one is redacted.

9 THE COURT: So we can put it up?

10 MR. HAMER: We can put this one up. Plaintiffs  
11 would offer PX 0100 into evidence.

12 MR. ORSINI: No objection.

13 THE COURT: All right. 0100 is received in  
14 evidence.

15 (Plaintiff Exhibit 0100 received in evidence.)

16 Q This document has a slide ending in 020 that is titled "A  
17 Recent Illustrative Negotiation," and that refers to Home  
18 Depot.

19 A Yes, that's what --

20 Q Do you see that? The data has been redacted from this.  
21 But the top part says, "Merchants are using the atmosphere  
22 created by the Durbin Amendment, the DOJ lawsuit and the  
23 private antitrust lawsuits as further arguments in favor of  
24 their already challenging demands in negotiations."

25 And in the box on the right, under "Proposed deal

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4876

1 terms for Home Depot," on the second from the bottom, it says,  
2 "Unlimited ability to steer surcharge, et cetera."

3 Do you see that?

4 A Yes.

5 Q Were -- have merchants, during your tenure, raised the  
6 possibility of steering because of the regulatory and  
7 litigation events in their negotiations with American Express?

8 A They did. I don't remember exactly who did; but  
9 obviously, it was raised by Home Depot.

10 Q And this was described as an illustrative example in this  
11 presentation to you; right?

12 A Yes.

13 Q Let's look at PX 0922. This is an e-mail from Steve  
14 McCurdy to Bill Glenn, July 28 --

15 A I'm sorry.

16 Q PX 0922.

17 MR. HAMER: And plaintiffs offer PX 0922 into  
18 evidence.

19 MR. ORSINI: Your Honor, no objection to the  
20 document itself coming in, although there's a fair bit of  
21 hearsay within hearsay. In the bottom e-mail, it's reflecting  
22 comments made by a non-Amex person. If it's not coming in for  
23 the truth, no objection. If it is, then I would object.

24 MR. HAMER: We're offering it for the state of mind.

25 THE COURT: State of mind. All right. PX 0922 is

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1 received in evidence.

2 (Plaintiff Exhibit 0922 received in evidence.)

3 Q Do you have the document there, Mr. Glenn?

4 A I do.

5 Q Okay. This discusses negotiations with Southwest

6 Airlines; right?

7 A Yes.

8 Q Look at the e-mail that is in the middle of the first  
9 page from Stuart Moffett to Greg Hybl, H-y-b-l; subject line  
10 Southwest call on Durbin. Do you see that?

11 A Greg Hybl and Nancy Polk, right. A number of folks.

12 Q Okay.

13 A And it says Southwest call on Durbin.

14 Q And this e-mail went up to Mr. Funda, who was in the  
15 pricing group; right? It was forwarded to Mr. Funda; right?

16 A I guess. He's not on the original distribution list.

17 Q And then he forwarded it to Mr. McCurdy, who was his  
18 boss; right?

19 A Right.

20 Q And Mr. McCurdy forwarded it to you; right?

21 A Yes.

22 Q Reporting on the status of Southwest negotiations or  
23 discussions?

24 A It says Southwest call, yes, or feedback from Southwest.

25 I haven't seen this e-mail --

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4878

1 Q If you look --

2 A -- so I don't remember.

3 Q -- at the second paragraph of the e-mail, it's reporting  
4 on a conversation with Chris Priebe. Do you understand that  
5 to be a Southwest employee?

6 A I actually have no idea who --

7 Q Okay. Let's look at the second paragraph. It says,  
8 "Overall, Chris didn't see an urgent need to revisit our  
9 CSA" -- that usually refers to Card Services Agreement?

10 A Yes.

11 Q -- "at this point. I gather his interest in following  
12 the legislation waned after the provision to allow  
13 differentiation on the basis of payment network was removed.  
14 In his words, the bill was neutered."

15 Did I read that correctly?

16 A You did, yes.

17 Q If you look on the last page, 651, the second-to-last  
18 full paragraph, Mr. Moffett reports that "My take on this is  
19 that once the draft was changed to remove discrimination by  
20 network that Chris figured he wouldn't be able to leverage  
21 this to save Southwest a significant amount in 2010, so he  
22 lost interest -- for now."

23 Did I read that correctly?

24 A You did.

25 Q And were you involved in analysis of the Durbin Amendment

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1 in 2010?

2 A I was. I mean, the team reported -- reported out to me.

3 Q And you understand that in the early drafts of that  
4 legislation there was a possibility of steering directly to a  
5 payment brand as opposed to a category of payment products;  
6 right?

7 A I don't remember the specifics, but I know there was  
8 steering somewhere embedded in the Durbin Amendment.

9 Q And while -- well, strike that.

10 You mentioned that you had responsibility for Canada  
11 over the last decade; right?

12 A I did, yes.

13 Q And so your jurisdiction both when you were in  
14 Establishment Services and then as president of Global  
15 Merchant Services included Canada?

16 A Yes.

17 Q And were you involved in American Express's responses to  
18 the regulatory environment in Canada?

19 A I was. The team reported out to me occasionally.

20 Q And you got reports on what the rules were in Canada and  
21 how they were changed?

22 A Yes.

23 Q Okay. Before 2010, American Express's anti-steering  
24 rules in the United States and in Canada were the same; right?

25 A I believe they were consistent, but -- so I think they

GLENN - CROSS / HAMER

4880

1 were consistent, yes.

2 Q Okay. And in 2010, Canada had a Code of Conduct that  
3 changed what networks were able to do with merchants on  
4 steering; right?

5 A I know the Code of Conduct made some -- one of the  
6 recommendations and some changes. I actually don't remember  
7 the specifics of that.

8 Q Okay. Do you remember that differential discounting or  
9 discounting for a particular network was permitted in Canada  
10 after 2010?

11 A I actually don't remember.

12 Q All right. Let's look at a couple of documents, first of  
13 all, PX 0005, which is an e-mail from Anna Cedeno,  
14 C-e-d-e-n-o, to a number of people, dated October 8, 2010.  
15 And on the second page it attaches a slide deck called Global  
16 Pricing and Review Management 2011 SQP.

17 A I see it, yes.

18 MR. HAMER: Plaintiffs would offer PX 0005 into  
19 evidence.

20 MR. ORSINI: It may already be in evidence, Your  
21 Honor, but if it's not, I have no objection.

22 THE COURT: I'm sorry. Say that again.

23 MR. ORSINI: I believe it may already be in  
24 evidence, but if it's not, I have no objection.

25 THE COURT: Okay. PX 0005 is received in evidence.

GLENN - CROSS / HAMER

4881

1 (Plaintiff Exhibit 0005 received in evidence.)

2 Q And, again, is this type of slide deck one that you  
3 received when you were head of Global Merchant Services?

4 A I received a lot of these documents. And it says I'm in  
5 attendance, so there's no reason to believe I wasn't there.

6 Q Okay. Thank you. If you'd turn to page ending in 346,  
7 there's a deck on Canada Code of Conduct. Are you with me  
8 there?

9 A Yes.

10 Q Okay. It says, "The Canadian Code of Conduct contains 10  
11 elements that networks and acquirers have agreed to adopt,  
12 including allowing merchants to differentially discount by  
13 network."

14 And then it has a comparison of Durbin, which was  
15 then going on in the United States, and on the right column  
16 Canada Code of Conduct. Do you see that?

17 A I do.

18 Q And the top line in that box says, "Merchants allowed to  
19 differentiate by payment type and network."

20 Did I read that correctly?

21 A Yes.

22 Q So as of 2010 forward, American Express was required to  
23 change its rules to allow merchants to discount for, for  
24 example, a MasterCard or a Visa card; is that right?

25 A I believe -- I don't remember what the final was, whether



GLENN - CROSS / HAMER

4882

1 this was the final ruling.

2 Q Now, before that Code of Conduct was implemented,  
3 American Express had opposed the changes; right?

4 A Had opposed them?

5 Q Had opposed the Code of Conduct.

6 A I believe we did, yes.

7 Q And was your team involved in talking to the Canadian  
8 Competition Bureau about those issues?

9 A I believe our head of Canada had discussions with the  
10 Competition Bureau.

11 Q Can you look at PX 1664?

12 A I'm sorry.

13 Q This is the --

14 A 16 --

15 Q 1664 --

16 A Oh, I'm sorry.

17 Q -- in the white binder. This is American Express  
18 submission of response to draft Code of Conduct for the credit  
19 and debit card industry in Canada, January 11 -- or  
20 January 18th, 2010.

21 A I'm sorry.

22 Q Do you have it there? It's PX 1664.

23 A Found it. Sorry.

24 Q And is this the submission that American Express made to  
25 the authorities in Canada?

GLENN - CROSS / HAMER

4883

1 A I don't remember seeing it, but it looks like it, yes.

2 MR. HAMER: Plaintiffs would offer PX 1664 into  
3 evidence.

4 MR. ORSINI: No objection, Your Honor.

5 THE COURT: PX 1664 is received in evidence.

6 (Plaintiff Exhibit 1664 received in evidence.)

7 Q If you look on page 650 of your submission to the  
8 Canadian government, you have a discussion of discounting. Do  
9 you see that?

10 A Yes.

11 Q And it discusses the then draft code, and it says that  
12 "The Code proposes to give merchants the right to provide  
13 discounts to consumers for different methods of payment (i.e.  
14 cash, debit card and credit card) and also be allowed to  
15 differentially discount among different brands. American  
16 Express opposes differential discounting between brands. As a  
17 network with a small market share, our ability to compete with  
18 the dominant networks is put at risk by differential  
19 discounting among brands, which we believe could be abused by  
20 the dominant networks (directly or indirectly through  
21 acquirers) by providing incentives to merchants to discount at  
22 a higher rate for their products vis-a-vis American Express  
23 products, ultimately lessening competition."

24 Was that your view at the time?

25 A Yeah. It's my view today, too, in terms of differential

GLENN - CROSS / HAMER

4884

1 discounting.

2 Q And a little further down at the bottom of this page, it  
3 says that "We believe that a merchant's ability to discount  
4 must not be permitted to upset the balance of the two-sided  
5 market (cardholder and merchant) at a significant cost to  
6 consumers and competition."

7 That was your position to Canada at the time; right?

8 A Yes.

9 Q Okay. So they did end up implementing the Code of  
10 Conduct; right?

11 A I don't remember exactly what was implemented.

12 Q Okay. Well, the document -- I won't pull it up now, but  
13 the document that we just looked at summarized what the Code  
14 of Conduct provided in the form of differential discounts. Do  
15 you recall that?

16 A It said -- I -- I also said I didn't know if that was the  
17 final Code of Conduct. I just don't remember.

18 Q Okay. Well, let's look at another document that might  
19 help. I'll introduce -- or I'll point you to PX 2722, which  
20 is another American Express presentation to the Competition  
21 Bureau, October 26, 2010.

22 MR. HAMER: This is not one that's on our exhibit  
23 list. It's a newly identified document. We would offer this  
24 in evidence.

25 MR. ORSINI: If I can have a minute to review it,

GLENN - CROSS / HAMER

4885

1 Your Honor.

2 THE COURT: Sure.

3 MR. ORSINI: I have no objection to the document,  
4 Your Honor, although I do note this is the third document that  
5 wasn't on the exhibit list that made it into the binder, but  
6 we didn't see in advance. So I would ask that in the future  
7 the government be directed to actually give us notice of the  
8 exhibits that are going to be used when they know they might  
9 be using them.

10 MR. HAMER: It's cross-examination, Your Honor, and  
11 it has happened very rarely. It has happened for both sides.  
12 But we will certainly try to give notice of any new documents  
13 that are not on the exhibit list.

14 THE COURT: Thank you. All right. PX 2722 is  
15 received in evidence.

16 (Plaintiff Exhibit 2722 received in evidence.)

17 Q Do you have it in front of you there?

18 A I do, yes.

19 Q So if you look at page ending in 816 -- again, this is in  
20 October of 2010 -- it describes the Code of Conduct for the  
21 debit and credit card industry and it describes the steps that  
22 American Express has taken to implement the Code of Conduct.  
23 Do you see that?

24 A Yes.

25 Q And above that, under the heading "Code of Conduct," the

GLENN - CROSS / HAMER

4886

1 third bullet says that "Merchants have a greater ability to  
2 promote lower cost forms of payment." Do you see that?

3 A Yes.

4 Q Now, do you recall at this time whether in Canada there  
5 was consideration of additional measures, like surcharging, as  
6 a possibility at this time?

7 A I don't.

8 Q Were you involved in meeting with the Competition Bureau  
9 in Canada?

10 A I personally didn't meet with the Competition Bureau.  
11 And I think this document, you know, represents a lot of which  
12 explaining to the Competition Bureau our model, just as I was  
13 in Washington, explaining to the folks there about how our  
14 business model is different and the effects of regulation and  
15 the effects of steering on our business.

16 Q Okay. Thank you. If you look on page 817 --

17 A Yes.

18 Q Do you have that there? The title is Government Policy  
19 Should Protect Value and Choice. The second bullet, it says,  
20 "The Code of Conduct represents an effective and reasoned  
21 approach to address concerns raised by merchants."

22 The next bullet says, "The Code of Conduct promotes  
23 healthy competition between market participants, both  
24 large" -- "small and large and is fair to merchants and  
25 consumers. A vigorously competitive marketplace encourages

GLENN - CROSS / HAMER

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1 new entrants and innovation and brings benefits to merchants  
2 and consumers." It says, "It is premature to evaluate the  
3 impact of the Code of Conduct."

4 And the second-to-last bullet says, "Regulation  
5 interferes in the complex balancing of interests comprising  
6 payment systems and can lead to unintended consequences."

7 Does that refresh your memory as to whether at this  
8 time frame, American Express was trying to persuade Canada not  
9 to engage in further regulation or actions beyond the Code of  
10 Conduct?

11 A I don't remember at this point in time. But our  
12 discussion with the government in Canada and in the U.S. is  
13 about the unintended consequences of regulation, pricing, or  
14 differential surcharging. It impacts our -- you know, our  
15 business model.

16 Q And that topic, if you look at page 819, the slide deck  
17 talks about your concerns about surcharges; right?

18 A And price regulation, right.

19 Q Right.

20 A Which is -- I think we've been consistent on that.

21 Q Okay. And then if you look on the final page, on  
22 page 820 under "Conclusions," the third bullet says, "The Code  
23 of Conduct is a balanced approach to address the concerns of  
24 merchants without harming competition and consumers."

25 Did I get that right?

GLENN - CROSS / HAMER

4888

1 A You did.

2 Q Do you agree that merchants differentially discounting to  
3 particular credit card networks is a balanced approach that  
4 would address concerns of merchants without harming  
5 competition and consumers?

6 A No, I don't.

7 Q Why not?

8 A Because our business model works to equal treatment at  
9 point-of-sale and not steering and discounting for different  
10 forms of payment. And we think that, you know, we've been  
11 fairly consistent in terms of government regulation and  
12 pricing has unintended consequences and ultimately doesn't  
13 benefit the consumer, and it certainly hurts our business  
14 model.

15 Q You don't dispute that American Express communicated to  
16 the Canadian authorities that it thought the Code of Conduct  
17 allowing for differential discounting was a fair and balanced  
18 approach?

19 A I actually don't know whether -- and I didn't present it,  
20 and I don't remember whether this sentence addresses  
21 specifically differential surcharging. I'm just not sure.

22 MR. HAMER: If I may have a moment, Your Honor?

23 THE COURT: Sure.

24 Q I want to ask you very briefly about Business Insights.  
25 You mentioned that earlier today. Do you recall that?

GLENN - CROSS / HAMER

4889

1 A Yes.

2 Q And you were a leader in American Express in trying to  
3 promote Business Insights as a service; right?

4 A As part of the value proposition and potentially as a  
5 service, a fee for revenue stream, as well, yes.

6 Q So it's taking the closed loop data that you obtained  
7 from transactions and monetizing it; right?

8 A As well as embedding it in the value, the insights that  
9 we have, embedding in the value, insights we give to  
10 merchants, as well as supporting the marketing programs that  
11 we run, as well as attempting to monetize some of these  
12 analytics, yes.

13 Q It's a separate team within American Express that  
14 promotes Business Insights; right?

15 A A separate team within the Merchant Services Business. I  
16 don't know where it stands today, but certainly when I left,  
17 it was.

18 Q Okay. And it's a separate contract with a merchant to  
19 purchase these services; right?

20 A Yes.

21 Q And these services allow merchants to identify American  
22 Express cardmembers and assist it in developing marketing  
23 strategies to help them; right?

24 A Well, we don't give the list to the merchants, right. So  
25 there are various forms of the insights and what they provide



GLENN - CROSS / HAMER

4890

1 for merchants. Excuse me. Some of them support the marketing  
2 programs. As I said earlier, merchants want to acquire new  
3 customers, just like we do, and they want to keep those  
4 customers. So some of the analytics support marketing  
5 programs.

6 There are other deep analytics that we do that are  
7 monetized by competition. MasterCard has a group that does  
8 that. MasterCard Advisors, I think they're called. The  
9 consulting companies have businesses that do that.

10 Q There are competitive products on the market that sell  
11 similar data services?

12 A I don't know if it's similar, but there are people who  
13 sell products and services to merchants.

14 Q And the way you described it -- and I think I got this  
15 right in your direct -- is, "We get information on who is  
16 spending and where they are spending," through your normal  
17 transaction data, and then you can sell information based on  
18 that to merchants who would be able to use it for marketing  
19 purposes; right?

20 A Yeah. We don't sell that information, right. We --  
21 it's -- some of it's embedded in the value proposition, right.  
22 Other that we haven't monetized. I don't think there's been a  
23 lot of monetization of some of the analytics that we do or  
24 deep analytics about their cardmembers and where they spend  
25 and, you know, what other kinds of industries they spend in.

GLENN - CROSS / HAMER

4891

1           So an example is some merchants actually think their  
2 competition is industry and Merchants A, B, C and D, and we do  
3 the analytics to tell them that, actually, they're not,  
4 without giving them specifics. So understanding who their  
5 customers are are some of the deep analytics that we do.

6   Q     So if a new merchant were starting up a shop in a  
7 particular location, you could sell data to assist that  
8 merchant to identify other cardmembers in the area who might  
9 be interested in working with that merchant?

10   A     We don't sell the data to merchants. So that is not --  
11 that's not what we do, right, which is we run market -- they  
12 want to run marketing programs with us to help them do it.  
13 Some of the insights that we sell are deep analytics that  
14 aren't attached to marketing programs, right, but we don't  
15 sell the data to merchants. We sell sort of -- when we  
16 monetized it, it was about the analytics and the service,  
17 which is different.

18   Q     Thanks for that clarification. But the services that you  
19 sell is based on the data that you can collect from the  
20 transactions --

21   A     Across the network, transactions, cardmembers, different  
22 merchants, yes.

23   Q     And that type of information can allow a new merchant to  
24 shift sales to itself from other merchants; correct?

25   A     It could allow them to acquire new customers from people

GLENN - CROSS / HAMER

4892

1 who shop at other merchants, right. And merchants are aware  
2 that we do these marketing programs.

3 Q Do you disclose to the merchants whose customers are  
4 being shifted to the new merchant that their transaction data  
5 is being used for that purpose?

6 A No, we don't.

7 Q Do you disclose this information to your cardholders,  
8 that their transaction information might be used to shift them  
9 to particular merchants?

10 A It's not their individual cardmember data. This is all  
11 like rounded, blind, right, not personally identified, and  
12 takes in millions of transactions in millions of locations to  
13 do modeling to help them market.

14 Q The merchants, obviously, have data themselves, not just  
15 about American Express cardholders but also about Visa and  
16 MasterCard and Discover cardholders who shop at their stores;  
17 right?

18 A Absolutely, they do. Yes.

19 Q And I take it you would have concerns if merchants used  
20 that data to try to shift their customers from American  
21 Express usage to your competitors' usage through steering;  
22 right?

23 A Yes.

24 MR. HAMER: One moment, Your Honor.

25 No further questions.

GLENN - REDIRECT / ORSINI

4893

1 THE COURT: Very well. Redirect.

2 MR. HAMER: Actually, Your Honor, I neglected to  
3 offer one document that we referenced in evidence, DX 0890.  
4 It was in Mr. Orsini's binder.

5 MR. ORSINI: I have no objection, Your Honor.

6 THE COURT: All right. DX 0890 is received in  
7 evidence.

8 (Defendant Exhibit 0890 received in evidence.)

9 THE COURT: How much redirect do you have?

10 MR. ORSINI: Not much, Your Honor. Fifteen minutes.

11 REDIRECT EXAMINATION

12 BY MR. ORSINI:

13 Q Mr. Hamer asked you a series of questions about the  
14 Canadian Code of Conduct and specifically related to  
15 differential discounting by networks. Do you recall that?

16 A I do, yes.

17 Q Do you have any knowledge as to the extent to which there  
18 actually has been any differential discounting by networks in  
19 Canada?

20 A I don't, no.

21 Q Do you have any knowledge as to what the trend in the  
22 Visa and MasterCard interchange rates have been since the Code  
23 of Conduct was introduced in Canada?

24 A I don't.

25 Q He also asked you about some desire by the government in

GLENN - REDIRECT / ORSINI

4894

1 Canada to allow for differential surcharging. Do you recall  
2 that?

3 A Yes.

4 Q Do you have any familiarity with the lawsuit that the  
5 government of Canada filed against Visa and MasterCard and  
6 lost on differential surcharging?

7 A I don't.

8 Q I'd like to go briefly to Walgreens.

9 MR. ORSINI: I'm going to start, if I may, Your  
10 Honor, by handing out one document.

11 THE COURT: Yes, you may. What are you going to  
12 use?

13 MR. ORSINI: Can we put a version on the screen?  
14 This is the Walgreens' contract. DX -- Mr. Glenn, what number  
15 is on there?

16 THE WITNESS: 0359.

17 MR. ORSINI: DX 0359.

18 Q Mr. Glenn, is this document a contract amendment between  
19 American Express and Walgreens from 1993? You'll see the  
20 date -- if you look on the first page up in the top, you'll  
21 see the names of the parties and you'll see the date.

22 A November 29th, 1993.

23 Q It's between American Express and Walgreens?

24 A Yes.

25 Q Now, if you look down towards the bottom of that page,

GLENN - REDIRECT / ORSINI

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1 you see the discount rates. I'm not going to read those out  
2 loud, but there's the discount rate at the highest volume band  
3 at that time. Was that the same discount rate that Walgreens  
4 had been paying at the time of the cancellation threat?

5 A I believe it was, yes.

6 Q Take a look at the next page and address a question that  
7 the Court had about the termination rights. If you take a  
8 look at paragraph 7, you see Term of Card Acceptance  
9 Agreement. Does that set forth -- and I guess we've redacted  
10 the numbers, so let's not use the numbers. Does that set  
11 forth the rights that each respective party had with respect  
12 to termination of the agreement?

13 A It does.

14 MR. ORSINI: Your Honor, I move this document into  
15 evidence.

16 MR. HAMER: No objection.

17 THE COURT: All right. DX 0359 is received in  
18 evidence.

19 (Defendant Exhibit 0359 received in evidence.)

20 MR. ORSINI: While we're on Walgreens, if I could  
21 hand out another document. Your Honor, this document has been  
22 marked as Defendant's Exhibit 7725-A. This is the full  
23 *USA Today* article from which I had excerpted some this  
24 morning. I have no further questions about it, but I move the  
25 document into evidence as a replacement for 7725.

GLENN - REDIRECT / ORSINI

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1 MR. HAMER: I commend them on their efficiency.

2 THE COURT: But you're not surprised by it?

3 MR. HAMER: Not surprised at all.

4 THE COURT: It took them a while to get it to me.

5 MR. ORSINI: It's because Mr. Hamer kept asking  
6 questions, Your Honor. That's the only reason.

7 MR. HAMER: It obviously has a lot of hearsay. We  
8 haven't read it. So with that reservation --

9 THE COURT: Oh, don't worry about that.

10 MR. ORSINI: And we're not seeking any of that for  
11 the truth.

12 THE COURT: Right. I think it's the picture that  
13 was the main objective of that exhibit, anyway.

14 MR. ORSINI: That is correct, Your Honor.

15 THE COURT: All right. Thank you. DX 7725-A is  
16 received in evidence.

17 (Defendant Exhibit 7725-A received in evidence.)

18 Q Now, Mr. Glenn, if you could look at the binder, the  
19 white binder that Mr. Hamer gave you. Take a look at  
20 Plaintiff's Exhibit 0426. This is the sales at risk analysis  
21 that Mr. Theiss presented that Mr. Hamer asked you about  
22 earlier. Do you recall that discussion?

23 A Yes.

24 Q Look at the last page of this exhibit, which is Bates  
25 number 9652. What is a break-even analysis?

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1 A A break-even analysis is a financial analysis based on  
2 our discount rate, our premium, and then the size of our  
3 transaction difference that says, essentially, to break even  
4 versus the bank cards, you would only need an incremental  
5 number of sales dollars to financially break even.

6 Q And if you look at the last of the break-even analysis,  
7 there's a reference -- I won't read any of these numbers out  
8 loud, but there's a reference to assumptions about what would  
9 happen with American Express charge volume. Can you explain  
10 what this is setting forth? Assuming what?

11 A Well, we're trying to get a blended rate of what, you  
12 know, the debit and bank card credit rates would be so that  
13 we're not just comparing -- we're just not comparing our rate  
14 to the credit card rate. So some business would shift to  
15 debit, some would shift to competitive networks, and  
16 essentially trying to get the right comparison.

17 Q And at this time, this sets forth the assumption that  
18 American Express was using with Walgreens about which  
19 percentage of Amex cardmembers would move to debit as compared  
20 to competing credit cards?

21 A Yes.

22 Q If you could take a look now at Plaintiff's Exhibit 0886.  
23 Do you have that in front of you, Mr. Glenn?

24 A I'm sorry. Yes.

25 Q And this is the e-mail chain -- one of the e-mail chains



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1 concerning the Medco issue and the question of whether  
2 American Express employees would continue to fill  
3 prescriptions at Walgreens?

4 A Yes.

5 Q Take a look at the page ending 656. And Mr. Hamer read  
6 to you, I think, the first sentence of the paragraph under  
7 "Miscellaneous." The second sentence is, "This is an  
8 estimate, and Medco shared this information for our knowledge  
9 only, which I confirmed we would not reveal to Walgreens."

10 To your knowledge, was that information ever  
11 actually revealed to Walgreens?

12 A No, it was not.

13 Q Had Walgreens continued to accept American Express cards,  
14 did American Express have any plans to stop its employees from  
15 filling their prescriptions at Walgreens?

16 A No, we didn't.

17 Q And it was prior to this that Walgreens had made the  
18 public announcement they were, in fact, going to cancel  
19 American Express cards; correct?

20 A They made the announcement on, I think, December 14th,  
21 '04. So it was about three weeks or four weeks before this.

22 Q And some of the contingency planning that Mr. Hamer also  
23 showed you, that had been contingency planning that was  
24 occurring after that public announcement; correct?

25 A Yes.

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1 Q And some of that contingency planning included making  
2 efforts to specifically inform cardmembers about the  
3 cancellation and the fact that they could use their -- they  
4 could do their grocery -- I'm sorry, not grocery, pharmacy  
5 business at other places that did accept American Express;  
6 correct?

7 A Yes.

8 Q And is that specific type of targeting something that  
9 American Express had plans to do with respect to any other  
10 pharmacies that were accepting American Express?

11 A No. Again, this was protecting our cardmembers after  
12 they were aware that Walgreens was cancelling. So we had  
13 plans -- if, in fact, they canceled, we wanted to protect our  
14 cardmembers and our spend.

15 Q Now, those things you had had conversations with Mr. Rein  
16 about as something American Express would have to consider if  
17 they did cancel; right?

18 A All along. When we're talking about the marketing  
19 programs and the cancellation, I told him that we were going  
20 to do what we needed to do to protect our cardmembers and the  
21 spend. It was important to our business, our business model,  
22 as we talked earlier, coverage, spend and perceptions of  
23 coverage. So I was consistent and clear with him.

24 Q And notwithstanding that, they did go through by actually  
25 cancelling effective midnight on that 14th; right?

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1 A They did.

2 Q And it was you who called Mr. Rein that morning and had  
3 another discussion with him; correct?

4 A The morning of the 14th, yes.

5 Q And it was after that conversation that they restarted  
6 American Express acceptance?

7 A Yes.

8 Q Now, Mr. Rein testified in this trial that the reason he  
9 restarted acceptance was because he didn't want to  
10 inconvenience any consumers. Was that consistent with your  
11 understanding of the conversation you had with him that  
12 morning?

13 A Well, you know, what -- I think I testified earlier that  
14 I made the call to plead with him that I didn't think it was  
15 in his best interest to have one consumer walk away because  
16 they weren't accepting American Express. And so, you know, I  
17 think that, in conjunction with the marketing programs and  
18 things we put on the table, probably persuaded him to continue  
19 acceptance.

20 Q Mr. Hamer also showed you the prepared -- or the  
21 preparation materials for the Q and A with investors. I  
22 believe that would have been in that summer, that August. Do  
23 you recall that?

24 A Yes.

25 Q And there was a reference there to this notion that

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1 American Express would be willing to provide the same rate,  
2 discount rate, that it provided to Walgreens to any other  
3 pharmacy chains. Do you recall that?

4 A Yes.

5 Q We also saw during your direct examination that American  
6 Express had added a discount rate band to the table as part of  
7 the Walgreens' negotiations. Do you recall that?

8 A Yes.

9 Q And when Amex added that band, which Walgreens wasn't  
10 eligible for at the time but was projected to be soon, did it  
11 add it just for Walgreens or for all of the pharmacy players?

12 A All of the folks -- all the merchants in the drug  
13 industry.

14 Q And why was it that American Express added that band at  
15 that time?

16 A Because we talked about the tables and transparency and  
17 integrity of our pricing. So if we added it for Walgreens, we  
18 added it for the entire industry.

19 Q Then, briefly, I just want to talk about coverage. There  
20 were a series of questions about spend coverage and locations  
21 in force coverage. During the time that you were managing the  
22 Global Merchant Services business, I believe you testified  
23 earlier today that you were focused upon expanding coverage;  
24 correct?

25 A Yes.

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4902

1 Q And which coverage number was more significant, in your  
2 view, in those efforts, LIF coverage or spend coverage?

3 A It was all about LIF coverage.

4 Q And can you explain why?

5 A Because we had millions of merchants who didn't accept.  
6 So we knew we had millions of merchants that didn't accept. I  
7 think the number we put in the board document was about  
8 5 million merchants. And, you know, publicly the competition  
9 has said, we're accepted at three times the number of  
10 locations. So we're constantly fighting the perceptions of  
11 coverage and what the competition talks about where Amex is  
12 accepted.

13 So, you know, fundamental to our business model is  
14 more merchants lead to greater cardmember spend, leads to  
15 better economics for us that we can invest back in the value  
16 proposition for our merchants and for our cardmembers.

17 So I talked about the blocking and tackling of the  
18 merchant business is to acquire more merchants and continue  
19 acceptance, you know, renew acceptance, continued acceptance  
20 of those merchants.

21 Q And if you could take a look back in the binder I gave  
22 you this morning and look at Defendant's Exhibit 4184.

23 MR. ORSINI: This document is in evidence,  
24 Your Honor. The slide I'm going to --

25 THE WITNESS: I'm sorry?

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4903

1 THE COURT: 4184.

2 MR. ORSINI: 4184. The slide I'm going to focus on  
3 actually has confidential information in it, Your Honor.

4 THE COURT: Is this a redacted version?

5 MR. ORSINI: Okay. So we have a redacted version.  
6 We can leave that up.

7 Q If you take a look, Mr. Glenn, at the page ending 843.  
8 Do you have that page entitled "Perceptions of Coverage"?

9 A I do, yes.

10 Q And the heading says, "Our recent research confirms that  
11 POC," perception of coverage, "lags LIF coverage in all  
12 markets apart from France, but it's significantly higher than  
13 active LIF coverage, confirming an opportunity to increase  
14 awareness of our existing merchant network."

15 And then there's a chart below it comparing the  
16 various coverage metrics.

17 In your experience, was it typically the case that  
18 perceptions of coverage would trail LIF coverage?

19 A Absolutely.

20 Q And if you can go back to the binder that Mr. Hamer gave  
21 you, the white one.

22 THE COURT: I'm sorry. How do you measure  
23 perceptions of coverage?

24 THE WITNESS: It's done through cardmember research.

25 THE COURT: Okay. And why would that -- why would

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1 that circumstance be logical, that the perceptions would be  
2 higher than the actual LIF coverage? Is that a messaging  
3 problem or something else?

4 THE WITNESS: I'm sorry, Your Honor.

5 THE COURT: The percent -- it says here, "Our recent  
6 research confirms that the perceptions of coverage" --

7 THE WITNESS: Lags.

8 THE COURT: -- "lags locations in force coverage";  
9 right?

10 THE WITNESS: Right. So it's lower.

11 THE COURT: It's lower?

12 THE WITNESS: Yes.

13 THE COURT: So why would you expect that to be the  
14 case?

15 THE WITNESS: Because, historically, I think back in  
16 the '90s, our actual coverage was at 50 percent. And so you  
17 hear it all the time, like, Amex isn't accepted everywhere.  
18 And so even when we gain coverage, we have to work really hard  
19 to influence cardmembers' perception.

20 THE COURT: So you're living with the perception,  
21 the historical perceptions that are based in historical fact?

22 THE WITNESS: Historic fact and actually current,  
23 because we know where we don't have coverage, whether it's --  
24 whether it's a coffee shop or a florist or a merchant in the  
25 Midwest or somewhere that's larger than a small merchant, it

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1 impacts peoples' perception of coverage.

2 I think I referenced the Costco example, which is,  
3 to us, alarming, which is we're the only credit card accepted  
4 at Costco locations -- credit card they accept there, and only  
5 60 percent of our cardmembers in the Pacific Northwest, where  
6 we have a high concentration of Costcos, perceive that we  
7 have -- we actually are accepted at Costco. And then it's  
8 worse for the prospects.

9 So when our consumer business try to get people to  
10 sign up for the card, right, the prospects say, well, it's not  
11 accepted everywhere. So it's not just the perceptions of  
12 coverage of our cardmembers. It's the issuing business  
13 challenge to let cardmembers know they can use it in all  
14 industries.

15 THE COURT: I see.

16 Q Mr. Glenn, if you could look in the white binder at  
17 Plaintiff's Exhibit 2725. And Mr. Hamer focused you on  
18 pages 643 and 644, so I'd like to start with 644.

19 First of all, did you believe when you were running  
20 Merchant Services that expanding LIF coverage was important?

21 A Yes. I not only believed it, but I was told we need to  
22 expand coverage of LIF.

23 Q Okay. Mr. Hamer asked you a series of questions about  
24 San Francisco, and I'll again remind all of us not to use the  
25 numbers. But the measure here for San Francisco, is this LIF



GLENN - REDIRECT / ORSINI

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1 coverage or is it active LIF coverage?

2 A This is LIF coverage.

3 Q Okay. So these are not necessarily the active LIFs in  
4 San Francisco?

5 A No. I think I indicated that earlier, which was --

6 Q Now, if you look at the page before, under the first  
7 arrow is total LIF coverage. It talks about those numbers,  
8 based upon these DMAs. Under number 2, which says "active LIF  
9 coverage," there are numbers, percentages of the merchant base  
10 that is inactive. And here, can you tell what the definition  
11 for inactive is? Is it the same one you used earlier?

12 A So active is one definition -- I'm sorry. Active  
13 represents one transaction at that particular merchant in a  
14 12-month period of time.

15 Q Okay. So if you were to look at the numbers that we saw  
16 in the other page we were just looking at for San Francisco  
17 and it were to be an active locations in force percentage,  
18 would you expect it to be higher or lower?

19 A Active is always lower.

20 Q And then under number 3 for merchant activity, there's a  
21 number of merchants -- and these are the active small  
22 merchants -- that see less than a certain number of ROCs per  
23 year. What is ROC?

24 A It's a transaction, right. So we looked at active a  
25 couple of ways. One is the lowest possible definition of

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1 active, which is one transaction in a year. And then we did  
2 some analysis that said, okay, let's take that up to -- in  
3 this case, it was five I think, right. See five or less, less  
4 than five ROCs per year. That's 37 percent of our active  
5 merchants.

6 So all this translates into what I talked about  
7 earlier, which is relevance, right? And people -- you know,  
8 merchants are inactive because of relevance of card or  
9 suppression, and we talked about active and passive  
10 suppression as well. So all that influences transactions.

11 Q So this is a progression. You start with sort of what  
12 our total LIF number is. Then you go to, of those LIFs, which  
13 ones are active. And then the last set of metrics is looking  
14 at, okay, they're active because they have one per year, but  
15 how many transactions did they sell?

16 A Yes, because we know if it's one transaction per year  
17 that merchants are eventually going to attrite. And that's  
18 why we spent a lot of time and effort trying to drive value  
19 and Marketing in a Box and some of these other programs for  
20 smaller merchants.

21 MR. ORSINI: No further questions, Your Honor.

22 MR. HAMER: One moment, Your Honor.

23 (Continued on the next page.)  
24  
25

Glenn - recross - Hamer

4908

1 THE COURT: Before you start, I have a lingering  
2 question. At the very beginning of your testimony you said  
3 you were now heading a joint venture and that American Express  
4 had a 50 percent interest in it. Who is the other 50 percent,  
5 is it some sort of an investment vehicle?

6 THE WITNESS: Yes, so BlackRock --

7 THE COURT: BlackRock?

8 THE WITNESS: BlackRock, Macquarie, Qatar, Macquarie  
9 and Certares, and there's I think [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 THE COURT: [REDACTED]

14 [REDACTED]

15 All right. Thank you. I was just curious because  
16 you said 50 percent.

17 THE WITNESS: Yes.

18 THE COURT: It left a big blank in my mind.

19 Go ahead.

20 RECROSS-EXAMINATION

21 BY MR. HAMER:

22 Q Very quickly, back to the same exhibit you were  
23 discussing, 2725, page 644, that has the list of the DMA  
24 with it.

25 A Yes.

*Glenn - recross - Hamer*

4909

1 Q So, you said that the active coverage is always lower  
2 than LIF coverage, is that right?

3 A Yes.

4 Q Okay. The first column --

5 A It has to be by definition, it is either the same or  
6 lower, but I've never seen it.

7 Q It makes sense. If you look at the first column, there's  
8 a percentage for New York City, do you see that?

9 A I actually know it's on here, so I can't --

10 THE COURT: What page? We're on 644?

11 THE WITNESS: Yes, number nine I guess.

12 Q And I can't read it aloud for you.

13 THE COURT: Is it is hard to read.

14 THE WITNESS: Yeah.

15 Q Would you agree the active LIF number for New York City  
16 would be lower than this percentage listed on 644 for New  
17 York, right?

18 A Yes, I think I testified earlier that it was in the low  
19 to mid 70's active, without disclosing this.

20 Q Okay. So, if someone said that the coverage for New York  
21 was the percentage listed here and the coverage for San  
22 Francisco were 50 percent, it wouldn't be comparing apples and  
23 apples, right?

24 Let me ask that again. If someone said that the  
25 active LIF coverage for New York City were as listed here and

*Glenn - recross - Hamer*

4910

1 the active LIF coverage for San Francisco were 50 percent, it  
2 wouldn't be comparing the same figures, right?

3 A None of these are active LIF, is that what you're --

4 Q That's fair enough.

5 So, none of the figures listed in the bottom of the  
6 slide are active LIF, right?

7 A No.

8 MR. HAMER: Okay. Thank you very much. No further  
9 questions.

10 MR. ORSINI: I have no questions, Your Honor.

11 I don't make the news, I just report it. I'm told  
12 that the identity of the investors in the JV are confidential,  
13 so we'll have to redact that piece of the transcript. My  
14 apologies. Some of them at least.

15 THE COURT: It is not relevant to the issues in this  
16 case, so we'll redact it all and erase it from our minds.

17 MR. ORSINI: Thank you, Your Honor.

18 THE COURT: At the same time I have no interest in  
19 any of those investment vehicles unfortunately.

20 MR. ORSINI: Nor do I, Your Honor.

21 THE COURT: All right. All of that will be redacted  
22 in the final version of the transcript.

23 MR. ORSINI: Thank you, Your Honor. I have no  
24 further questions.

25 THE COURT: Anything further?

*Glenn - recross - Hamer*

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1 MR. ORSINI: No, Your Honor.

2 THE COURT: Very well.

3 Mr. Glenn, you're excused. You may stand down.

4 THE WITNESS: Thank you.

5 THE COURT: Have a good day.

6 MR. ORSINI: Thank you.

7 (Witness steps down.)

8 THE COURT: Okay. Now, who is going to be the next  
9 witness?

10 MR. ORSINI: It is my day, Your Honor.

11 THE COURT: Your day.

12 And whose day is it on the other side? Mr. Glass?  
13 I saw you slip in.

14 MR. GLASS: Good afternoon, Your Honor.

15 THE COURT: Good afternoon and welcome.

16 Why don't we take a ten minute break and then we'll  
17 resume.

18 MR. ORSINI: Can I ask are we going to go to five  
19 today or going later today?

20 THE COURT: We'll go to six. Is there any reason we  
21 shouldn't go till six?

22 MR. ORSINI: No, that's fine.

23 THE COURT: We'll go till six to try to get more in.  
24 All right, thank you.

25 (Recess taken.)

*Hayes - direct - Orsini*

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1 THE COURT: Please be seated.

2 All right. The defense may call its next witness.

3 MR. ORSINI: Your Honor, American Express calls John  
4 Hayes.

5 (Witness takes the stand.)

6 THE COURT: Remain standing.

7 (Witness sworn by the clerk.)

8 J O H N H A Y E S, having been first duly  
9 sworn was examined and testified as follows:

10 THE CLERK: Have a seat. Please state and spell  
11 your full name for the record.

12 THE WITNESS: John -- do you want my middle name?

13 THE CLERK: Everything.

14 THE WITNESS: John Dennis Hayes, J O H N,  
15 D E N N I S, H A Y E S.

16 THE COURT: You may inquire.

17 MR. ORSINI: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. ORSINI:

20 Q Good afternoon, Mr. Hayes.

21 A Good afternoon.

22 Q Mr. Hayes, by whom are you currently employed?

23 A American Express.

24 Q How long have you been working for American Express?

25 A A little over 19 years.

*Hayes - direct - Orsini*

4913

1 Q What position do you currently hold?

2 A Chief Marketing Officer.

3 Q To whom do you report?

4 A Ken Chenault.

5 Q Have you been the Chief Marketing Officer the entire 19  
6 years you've been at American Express?

7 A My responsibilities have been basically the same, the  
8 title did change though in August of 2003.

9 Q Okay. So, the job responsibilities were the same but the  
10 title changed?

11 A That's correct.

12 Q Now, are you an officer of the American Express Company?

13 A Yes, I am.

14 Q For how long have you been an officer of the American  
15 Express Company?

16 A The entire time I've been with the company.

17 THE COURT: That title has been mentioned before.  
18 What does it mean to be an officer of the American Express  
19 Company? What are the special responsibilities of being an  
20 officer as opposed to not being an officer?

21 THE WITNESS: Okay. We are, all of the officers are  
22 on the operating committee and the operating committee  
23 operates as the -- think of it as the internal governance body  
24 of the company.

25 THE COURT: It manages the company?



*Hayes - direct - Orsini*

4914

1 THE WITNESS: It manages the company and the people  
2 who are officers come from many different disciplines.

3 THE COURT: Okay. I see. Thank you.

4 MR. ORSINI: Thank you, Your Honor.

5 THE COURT: Thank you so much.

6 Q Just briefly, before we come back to your  
7 responsibilities as Chief Marketing Officer, what did you do  
8 before you joined American Express?

9 A I was in the advertising agency business and I had spent  
10 my entire career in that business before coming to American  
11 Express.

12 Q What is your educational background?

13 A I graduated with a BA in communications from Seton Hall  
14 University.

15 Q And when did you graduate from Seton Hall?

16 A 1976.

17 Q So, focusing on the years you've spent as the Chief  
18 Marketing Officer for American Express, in broad strokes, what  
19 have been your responsibilities and what are you responsible  
20 for today?

21 A I oversee a few things. First of all, I oversee what we  
22 call end-to-end marketing which really is working with the  
23 business units to be sure that we're taking an end-to-end view  
24 of the customer, so that's one area. Second is brand  
25 management and managing the American Express brand across all

*Hayes - direct - Orsini*

4915

1 of our businesses around the world; the Marketplace Insights,  
2 which is our market research function, that provides  
3 information from the marketplace in various forms, and then,  
4 lastly, our media function which really is buying media in all  
5 of the different forms, whether it is television, radio,  
6 internet, etc.

7 Q When you say "buying media," what do you mean by that?

8 A We purchase media for advertising, so anything that is  
9 mass communications and is part of that area goes through my  
10 group. So, it is buying media in the sense of, you know,  
11 buying television time for commercials to run and things like  
12 that.

13 Q You mentioned Marketplace Insights. Is that sometimes  
14 referred to as Global Marketplace Insights or GMPI?

15 A Yes.

16 Q And that group reports to you?

17 A Yes, they do.

18 Q Generally speaking, what does that group do?

19 A That group works in a research -- with research skills to  
20 go to the marketplace and either answer questions on behalf of  
21 the businesses, so they'll ask questions on behalf of our  
22 businesses but they also go into the market to try to track  
23 how well we're performing mostly from a perceptual standpoint.

24 Q The Court has seen various perceptions of coverage  
25 studies; is that something that GMPI is responsible for?

*Hayes - direct - Orsini*

4916

1 A Yes, it is.

2 Q And the Court has also seen some merchant satisfaction  
3 studies; is that something that GMPI is responsible for?

4 A Yes, it is. So, all of those studies would be included.

5 Q The first responsibility you mentioned of the Chief  
6 Marketing Officer was being responsible for, I believe you  
7 said end-to-end marketing. Can you explain what you mean by  
8 that?

9 A Certainly. We just want to be sure that we -- there's a  
10 lot of marketing that's done within our business units and we  
11 also want to be sure though that we're taking a full  
12 comprehensive view of the customer and recognizing that  
13 there's many different messages that the customer might  
14 receive and working to ensure that we bring a uniformity and  
15 consistency to how we message in the market.

16 Q And what type of customers are you talking about when  
17 you're referencing customers for the end-to-end marketing?

18 A Many customers of American Express; that would include  
19 cardmembers, whether that's consumer, small business,  
20 corporate, it would include merchants who are our customers  
21 and so, it really would mean comprehensively anyone that we  
22 would do business with. The only group I wouldn't put into  
23 that would be our bank partners because I refer to them more  
24 as partners.

25 Q Those are the GNS partners?

*Hayes - direct - Orsini*

4917

1 A That's correct.

2 Q The Court has also heard a fair bit of testimony about  
3 the various targeted marketing programs that American Express  
4 runs with merchants that accept its cards. Are those type of  
5 marketing programs within your group or is that handled in a  
6 separate group?

7 A That's handled in a separate group, that's within the  
8 merchant group, Merchant Services Group.

9 Q And the fourth piece of responsibility you mentioned a  
10 few minutes ago was managing all aspects of overseeing the  
11 American Express brand?

12 A Yes.

13 Q I'd like to talk generally a little bit, and then we'll  
14 hone into the American Express brand, when you're using the  
15 term "brand," what do you mean by that?

16 A Well, you know, branding is an art form I guess but if I  
17 think about branding, the origin of branding, I'll start  
18 there, the origin of branding was really, you know, that's  
19 my cow, that's where branding came from, that's where it  
20 started, and it really has to do with creating a meaningful  
21 identifier for what you're offerings are in the marketplace.  
22 And so, in terms of what, you know, I try to do is to make  
23 sure that we bring consistency, that we don't have confusion  
24 in the marketplace for what our brand stands for.

25 Q What is the importance of a brand for a company's

*Hayes - direct - Orsini*

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1 messaging to its sets of customers?

2 A Well, it's very important because what a brand can -- you  
3 know, brands really help consumers navigate the marketplace,  
4 it helps them make decisions and so brands are fundamental to  
5 the value of a company and can add enormous value in terms of  
6 how much plus business and growth a company can get as well as  
7 keeping a stable group of customers. So, brands are  
8 fundamental to the success of a business.

9 Q Are you familiar with the term "brand attribute"?

10 A Yes, I am.

11 Q What is a brand attribute?

12 A A brand attribute would be one of the things that might  
13 define a brand and those attributes can be both rational or  
14 emotional because there's both things at play with most strong  
15 brands in the marketplace.

16 Q Can you give us an example of what you mean by a rational  
17 brand attribute?

18 A A rational brand attribute might be something that's very  
19 concrete in terms of how it might perform, all right. So, if  
20 we're talking about automobile brands, it might have to do  
21 with how fast something accelerates in terms of performance  
22 and if it's a car brand that performs in a very fast way, a  
23 rational attribute might be how fast that car is.

24 Q And what's an emotional attribute?

25 A An emotional attribute is how good I look driving that

*Hayes - direct - Orsini*

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1 car. It is much more on an emotional basis. It is something  
2 that will create a connection with a particular segment of the  
3 population on an emotional basis and the emotions are really  
4 important and I just want to take a moment, if I can, just to  
5 explain because I think the emotional part sounds a little bit  
6 amorphous but, you know, the emotional piece is critical and  
7 one of the things I've seen in the last few years is there was  
8 some research done in the motion picture business where what  
9 they found was that when they surveyed people about their  
10 favorite motion picture, they found that many people could not  
11 recall many scenes from the film but what they remembered most  
12 was how they felt. So, someone would say, oh, that was such a  
13 funny movie or I cried when I saw that movie, and those  
14 emotional connections seem to be the most robust and most  
15 important connections and so, branding is both a rational and  
16 emotional set of elements.

17 Q As you manage the American Express brand, are you  
18 cognizant of both types of brand attributes?

19 A Yes.

20 Q Now, how does, still talking generally, how does a brand  
21 become associated with certain attributes, whether they be  
22 emotional or rational?

23 A Well, I think there's two fundamental pieces. The first  
24 is the promise made. So, you know, you can find the promise  
25 that's being made by a brand in its communications, you know,

*Hayes - direct - Orsini*

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1 what does it promise it will do, what will it promise that it  
2 will be and what will it promise who is it for.

3 So, the promise is a very important part of the  
4 brand but just as important or probably even more important is  
5 the delivery of that promise or how the promise is kept and  
6 so, when we think about branding, we think about the promise  
7 made and is that appealing, is that differentiated but, more  
8 importantly, the promise kept and when I say the promise kept,  
9 it really is how does that brand's products deliver on the  
10 promises that that brand has made. If it delivers well, there  
11 will be high levels of satisfaction. If it under-delivers,  
12 there will be high levels of dissatisfaction.

13 Q So, in your experience, what happens when a brand makes a  
14 promise that it doesn't then live up to?

15 A Usually the business will be hurt and the business could  
16 be hurt considerably. It's really important that, the  
17 consistency of the promise so people can understand it, so you  
18 have to have a promise that you make that is fairly  
19 straightforward, that you do consistently, and then the  
20 delivery of that promise has to be just as focused, just as  
21 consistent and deliver on the promise that's been made.

22 Q Can you think of some, or one example or two of  
23 situations where a brand has made a promise that it didn't  
24 keep and the effect that had on the company?

25 A Yeah, I guess the best example I could come up with off

*Hayes - direct - Orsini*

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1 the top of my head would be Cadillac would be one brand that I  
2 think has gone through an enormous set of issues. It was an  
3 extremely prominent brand if you go back to the 40's and 50's  
4 but tended to lose its way in the late 60's and 70's and early  
5 80's and while General Motors has done a lot of work to  
6 rebuild that brand into something of prominence, they really  
7 did lose much of their market dominance that they had at one  
8 time enjoyed and it's mostly because there was a promise that  
9 Cadillac had made, I mean people would even have an  
10 expression, it's the Cadillac of whatever industry, meaning  
11 the best, and they stopped delivering what would be considered  
12 the best in the marketplace.

13 And, so that's just an example of a brand that's  
14 gone through an evolution where the promise and the delivery  
15 didn't align and, therefore, there was falloff in the  
16 business, serious falloff. Obviously for the last decade or  
17 so General Motors has spent a lot of money to try to rebuild  
18 that brand and its meaning.

19 Q Now, do you consider a brand to be an asset of a company?

20 A I do.

21 Q And what do you mean by that?

22 A Well, I think it's an aspect of a company that adds value  
23 because it helps to define your products and offerings, it  
24 helps to attract customers, it helps to retain customers from  
25 a loyalty standpoint. So, it performs a number of functions



*Hayes - direct - Orsini*

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1 for a company and if the brand is well defined and well  
2 developed, it is an asset of that business.

3 Q Are there firms out there that measure the monetary value  
4 of particular brands associated with companies?

5 A Yes, there are.

6 Q And have you seen these from time to time with respect to  
7 American Express?

8 A I have.

9 Q And according to these studies, what's the range of  
10 values for the American Express brand?

11 A Oh, you know, I've seen an enormous range because there  
12 are different forms or methodologies to these individual  
13 companies, these third parties that value brands. I have seen  
14 actually most recently a few months ago there was a BrandZ  
15 study that was published in the New York Times and they valued  
16 the American Express brand at someplace around 35 billion  
17 dollars. I've seen estimates that go as high as 45 billion  
18 dollars and I've seen them as low as, you know, someplace  
19 around 20 billion. So, there's quite a range in terms of the  
20 monetary value that someone might ascribe to the American  
21 Express brand.

22 Q What's BrandZ?

23 A I don't know much about BrandZ. As I said, they were  
24 published in the New York Times, I don't know that much about  
25 their formula. I know more about the Interbrand formula in

*Hayes - direct - Orsini*

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1 terms of how they do valuations, but it was just something I  
2 had noted because it was in the paper.

3 Q So, BrandZ and Interbrand, these are organizations or --

4 A Third parties, all third parties, all separate from us  
5 certainly and they create their own formulas for how they go  
6 about valuing a brand.

7 Q What significance do you ascribe to these monetary  
8 valuations of the American Express brand?

9 A You know, I take them with a grain of salt partly because  
10 there is so much, you know, volatility or difference in what  
11 they report because for me the value of a brand is not in  
12 these formulas that might estimate the asset value but rather  
13 in what a brand can do for a business and that to me is where  
14 the value of a brand comes in terms of what impact it might  
15 have on business results.

16 Q Now, you're Chief Marketing Officer; what role does  
17 marketing play in establishing or preserving the value of a  
18 brand?

19 A Well, as I mentioned earlier, marketing is the promise  
20 made. I mean for the most part the marketing is designed to  
21 help people in the marketplace, sometimes your customers,  
22 sometimes your prospects, to better understand what you  
23 promise in that marketplace and so, marketing is really  
24 designed to communicate that promise and to put it out there  
25 in the marketplace.

*Hayes - direct - Orsini*

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1 Q So, marketing is the promise made. How is the promise  
2 kept?

3 A Promise kept is really the experience and experiences are  
4 really where brands are built, it is really where brands are  
5 formulated. And the challenge to branding today is to create  
6 an experience that you can manage consistently across all of  
7 the touch points that a customer will have.

8 Q You use the term "touch points," what do you mean by  
9 that?

10 A Well, touch points are where you would touch the  
11 customer, it's places where the customer will come in contact  
12 with the brand through its products, through its services,  
13 through its marketing, through everything that happens. We  
14 consider every time a customer comes in contact with  
15 something, in our case American Express, that to be a touch  
16 point that will create an experience that will either be  
17 consistent and build the brand and build the value of the  
18 brand or inconsistent and, therefore, begin to erode the  
19 brand.

20 Q So, let's focus in on the American Express brand. Are  
21 you familiar with the term "brand promise"?

22 A I am.

23 Q And does that relate to what you've been describing, the  
24 promise that you make to your customers?

25 A Yes, it is.

*Hayes - direct - Orsini*

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1 Q What is the American Express brand promise?

2 A The simplest way I can describe the American Express  
3 brand promise is with three critical pieces, trust, security,  
4 and service. That's the promise that's made with everything  
5 that American Express does.

6 Q Okay. I'll come to each of those but one question first,  
7 what role does exclusivity play in the American Express brand  
8 or the American Express brand promise?

9 A Exclusivity is something that is attributable to some of  
10 our products, so we have products whose value is derived  
11 somewhat from exclusivity. So, the best example I can use  
12 would be the Centurion Card, the black American Express Card,  
13 but that relates to that individual product. The brand itself  
14 is not really creating the attribute of exclusivity.

15 So, there are attributes that exist within our  
16 products that might be specific to a product but not  
17 necessarily carrying across everything we do and, therefore,  
18 the brand in its totality, the enterprise view.

19 Q So, can you give the Court some examples of products,  
20 unlike the Centurion Card, where exclusivity is not part of  
21 the brand aspect?

22 A Serve and Bluebird would both be great examples of  
23 products that are marketed on a mass basis. They are easily  
24 accessible, they can be purchased in many retail locations.  
25 They don't require a credit check or any kind of credit

*Hayes - direct - Orsini*

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1 clearance. So, they're extremely accessible products but  
2 trust, security and service is still very present in those  
3 products just as they would be at something that's exclusive  
4 from us.

5 Q So, were you involved in discussions around the launch of  
6 the Serve product?

7 A Yes, I was.

8 Q Can you describe what the Serve product is?

9 A Certainly. It is a prepaid account, a full service  
10 prepaid account is really the way we describe it, and full  
11 service is critical here. We named the product Serve for a  
12 reason, because it's not just a disposable transaction device.  
13 We don't view it as just a prepaid card that somebody might  
14 load once and be done with. We see it as a way of providing a  
15 full service offering to a new segment of the population for  
16 us.

17 Q And you were also involved in discussions around the  
18 Bluebird card?

19 A Yes.

20 Q And why did American Express launch the Bluebird card?

21 A Well, it was a unique opportunity because it is a card  
22 that comes from -- it is actually a co-branded card, it comes  
23 from two brands, it comes from American Express and Wal-Mart,  
24 and it was a unique opportunity to create a full service  
25 prepaid account that allowed us to put it in a market and

*Hayes - direct - Orsini*

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1 bring it to market from both American Express and Wal-Mart  
2 which those two brands are complementary but they bring  
3 different attributes to the marketplace.

4 Q So, what do you mean when you say the brands of American  
5 Express and Wal-Mart are complementary?

6 A Well, you know, the two brands are high quality brands.  
7 We felt that the two of them together would provide a more  
8 complete picture for this product. So, you know, you've got  
9 the trust, the security and the service from American Express  
10 that people will expect of that product but you've also got  
11 the convenience and value that Wal-Mart stands for and when  
12 you bring them together, we think it can be a very unique and  
13 potent offering in the marketplace.

14 Q So, let's talk about these three words that you've been  
15 using, trust, security and service. When you talk about  
16 trust, what do you mean by that?

17 A Well, trust is something that, you know, requires --  
18 first of all, it is an emotional response and it's something  
19 that requires being built over time. It is not something you  
20 can claim, it is not something you can say. In fact, probably  
21 the worst thing you can say is "trust me" to create distrust.

22 So, trust is something you earn over time and it is  
23 something that customers come to rely on as it relates to the  
24 things that you're offering. Can I just digress a bit in the  
25 history?

*Hayes - direct - Orsini*

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1 Q Sure.

2 A Just to give you a little bit of perspective on why trust  
3 is so important. If you think about the businesses that  
4 American Express has been in, starting in 1850 with freight  
5 forwarding, moving forward from there to Travelers Cheques,  
6 these businesses required that people turn over to us their  
7 valuables, whether it is cash for the Travelers Cheque or  
8 their goods to be forwarded in the freight forwarding  
9 business, and because of that, trust was a high -- is a very  
10 important element that this brand needed to stand for in the  
11 marketplace and from the time of our beginnings trust is  
12 something that we have developed over time by doing the right  
13 thing by our customers and delivering on all of these products  
14 and services that we've had in the market since 1850.

15 Q So, how do you view trust as playing into the products  
16 American Express offers today as compared to some of the  
17 historical products you just described?

18 A Well, it's just as essential today as it's always been  
19 but just to finish on my last point, I think that earning  
20 trust is really the point I'm making and so it's an attribute  
21 of the American Express brand today not because we say so but  
22 because we've earned it and it plays a very important role in  
23 the business today. You know, our customers trust us. So,  
24 when you talk about Serve and Bluebird, that trust manifests  
25 in ways that people feel confident giving us their cash that

*Hayes - direct - Orsini*

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1 will then be put on a card that they can go off and use. The  
2 trust will be manifest in things like having the confidence to  
3 do business, to transact with someone they may not be un --  
4 they may not be familiar with, that may be unfamiliar to them  
5 but the trust of American Express and the fact that they  
6 believe we have their back is something that will add value to  
7 that transaction because it gives them the confidence to do  
8 that transaction.

9 That's just a couple of examples. I guess the last  
10 example I would say, in the digital world trust is a really  
11 important factor. You know, consumers need to trust us from  
12 everything to -- as I just mentioned, the unfamiliar, which  
13 the digital space has many places that are unfamiliar, all the  
14 way through to their personal data, their privacy and how can  
15 they trust that that will be managed well for them. So, trust  
16 plays a role in many aspects of our business today.

17 Q How does security relate to these concepts you were just  
18 describing as another aspect of the American Express brand  
19 promise?

20 A Well, security is definitely related to trust but the  
21 difference is that the way I would describe security as it  
22 relates to the customer really comes down to peace of mind.  
23 It's the lack of worry. It's that sense that, you know, I'm  
24 confident that someone is going to have my back, is going to  
25 help me if there's an issue. And the point I want to make



*Hayes - direct - Orsini*

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1 here is we're talking about each of these elements separately  
2 and I struggle a little bit talking about them separately  
3 because when I conceptualize the trust, security and service  
4 for American Express, I see it together, I see it as really  
5 one entity because they're so related, trust and security are  
6 so related and the service we provide is really what we do, is  
7 more of the rational side of it, is what we do for people  
8 that, you know, gives you that trust and that security. So,  
9 these things are very closely related.

10 Q Now, how in your view has -- let's take the service  
11 piece, how has American Express over the time that you've been  
12 at the company reinforced this brand promise of service?

13 A Well, service is critical to everything we do and, you  
14 know, as I mentioned earlier, you can see that in our  
15 communications, service has always been a critical part of the  
16 value that we offer but we also invest an enormous amount in  
17 the delivery of that service and the service delivery is a  
18 critical part of what we consider to be our operations and to  
19 what brings meaning to the brand.

20 So, service is a critical part of what we do and we  
21 measure just about every aspect of service in our -- in the  
22 delivery process to understand whether or not it is being well  
23 received by the customer.

24 Q And you mentioned a few times this notion that American  
25 Express has people's back, what did you mean by that?

*Hayes - direct - Orsini*

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1 A Well, what I mean by that is in terms of our service and  
2 the way we treat our customers, there's a high level of  
3 confidence that they will not be left stranded and some of  
4 that came from the days when we were in the travel business  
5 but a lot of it is relevant to, you know, where we are today  
6 in the card business.

7 You know, this idea that we are going to have their  
8 back, we're going to deliver for them is a big part of what  
9 makes this brand valuable and, you know, when you think about  
10 the value of this brand, it's so important that we view it in  
11 light of the market that we are doing business in. So,  
12 service is a critical part of what we do and it's a critical  
13 part of, you know, supporting the desirability of our products  
14 in the marketplace.

15 Q And when you said that there's a high level of confidence  
16 that the customer will not be left stranded, can you give us  
17 some examples of what you mean by that and the ways that  
18 American Express has reinforced that?

19 A Well, for years we have offered products, if you think  
20 about the Travelers Cheque product and Don't Leave Home  
21 Without It and the promise there was that this was a product  
22 that was going to offer you the, you know, the confidence to  
23 travel with your money and know that you're going to be safe  
24 in the process. That's just some of the history of that  
25 confidence and having people's back and covering the things

*Hayes - direct - Orsini*

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1 that they need. We have taken that all the way up to today  
2 with many of the services that we offer as a company.

3 Q And do those services include travel protections?

4 A Oh, they include many things but travel protections is  
5 certainly one of them, purchase protections are some of them.  
6 There's, you know, a myriad of services that we offer that  
7 give people the confidence to, you know, to purchase things,  
8 to travel places, to do things, to live their lives and those  
9 services ultimately deliver on this idea of confidence,  
10 security for the brand.

11 Q And are there circumstances in which American Express  
12 provides, for example, travel protections even when it is  
13 not contractually obligated to provide them to the  
14 cardmembers?

15 A Well, yeah, I mean, you know, there are examples where,  
16 you know, I guess one of the things that, from where I sit,  
17 that builds this brand is the actions we take and I think  
18 about there was an event that followed shortly after 9/11 in  
19 2001 and if you think back to that time, you'll recall that  
20 there was a complete disarray in terms of travel, you know,  
21 airlines were grounded, things had changed pretty radically  
22 overnight and one of the knock-on effects was the cruise  
23 business and, you know, we were -- I remember being in a  
24 meeting not long after 9/11, I can't recall how long, it could  
25 have been four or six weeks, where we were -- it was about

*Hayes - direct - Orsini*

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1 seven or eight of us talking about a cruise line, Renaissance  
2 Cruise Line that was about to go under and, you know, when a  
3 cruise line goes under, the creditors are -- many of them are  
4 the ticket holders because they have to buy those tickets in  
5 advance and we debated whether or not, you know, this was not  
6 something that we had to refund to these folks, we didn't have  
7 a responsibility from a legal standpoint but we decided in  
8 that meeting that we would stand behind those customers and we  
9 would refund those customers and the reason we did it is  
10 because we said that's consistent with this brand, because I'm  
11 not the only person at American Express who worries about this  
12 brand, you can talk to people throughout the company and  
13 they'll tell you about the American Express brand, I don't do  
14 this alone, I do this with everyone else.

15 And in this particular case it was clear to  
16 everybody in that room that refunding those people and having  
17 their back was the right thing, even though the total amount  
18 was, I don't know, someplace around 22 or 24 million dollars  
19 to cover that, we thought it was the right thing to do because  
20 these people had bought these tickets with their American  
21 Express Card with the belief that we have their back.

22 Q Now, there's been some discussion, I think you raised it  
23 a little bit earlier, about the American Express closed loop  
24 data and the things that American Express can do with that.  
25 Does American Express also use that data to assist in this

*Hayes - direct - Orsini*

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1 goal of serving cardmembers?

2 A We do. We use it to serve -- the data is used in a  
3 number of ways. One way to use the data is obviously fraud  
4 detection and understanding, you know, the normal patterns of  
5 our cardmembers versus what we might see when something is out  
6 of pattern. But we've also used it in situations like if you  
7 recall the tsunami in Thailand in 2000 -- I think it was 2004  
8 right after the holidays or right during the holidays and we  
9 were able to, you know, our service center in Asia was able to  
10 make use of cardmember data and transactions to identify the  
11 people who had in fact survived the tsunami and where they  
12 might be following that event and we were able to get some of  
13 that information back to their families so that they had an  
14 idea of the fact that these people were okay and where, what  
15 their whereabouts was at that point.

16 So, that's just an example of how that data can be  
17 used and is used at times. But -- that was an extraordinary  
18 situation but on a daily basis, you know, protecting our  
19 cardmembers and our merchants in terms of things like fraud,  
20 that cardmember data is also used there.

21 Q You also mentioned earlier that one of the things that  
22 the brand is built on are experiences.

23 Do you have a role in creating experiences for  
24 cardmembers?

25 A I do. You know, it is a very big part of what we do from

*Hayes - direct - Orsini*

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1 a marketing standpoint, creating events and creating  
2 experiences in those events is a big part of both  
3 reinforcing for our customers, our cardmembers what it  
4 feels like, what is the value of American Express, but we  
5 also do it to include prospects many times as well so that  
6 they can feel what it is like to be a customer of American  
7 Express.

8 And we do a variety of events, I mean we do things  
9 like one of the things we've done for a number of years is  
10 front of the line ticket access and giving people an advantage  
11 to see and experience the things they want to see.

12 We've done a number of things to create unique  
13 experiences at the U.S. Open., the U.S. Open tennis event,  
14 it's been an event we've been involved with for the last 20  
15 years, and we recognize that many of our cardmembers and  
16 customers have a passion for tennis and so out there we create  
17 a unique experience, whether it's getting the radio that clips  
18 right on to your ear so you can see the play-by-play while  
19 you're there which you can't experience live any other way;  
20 it's creating services, we bring up some of our service people  
21 from Fort Lauderdale and have them on-site to serve our  
22 cardmembers and in some cases prospects, and so we do a number  
23 of things.

24 Another event that we do is called Unstaged where we  
25 live-stream special music concerts because we know another

*Hayes - direct - Orsini*

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1 passion of our cardmembers is music and we give them access  
2 to unique acts that they really couldn't get to any other  
3 way. For something like that prospects, you know, non-  
4 cardmembers as well as cardmembers have access to that for the  
5 reasons I've cited because it is important for them to  
6 understand what it feels like, what is the experience of being  
7 a customer of American Express.

8 Q Now, if you take a look at in your binder which I have  
9 not handed to you so you can't.

10 MR. ORSINI: Your Honor, if I may approach?

11 THE COURT: Yes, you may.

12 Q And in the binder I've handed you, Mr. Hayes, if you can  
13 take a look at the document designated as Defendant's Exhibit  
14 6763.

15 MR. ORSINI: Your Honor, this document is not  
16 confidential.

17 THE COURT: Okay.

18 Q Mr. Hayes, what is this document?

19 A This is an internal document that my team created and  
20 it's a document that we -- this is a good representation of  
21 what we do internally to bring a focus to our brand on an  
22 internal basis to help make sure everyone is focused on the  
23 brand, that everybody is, you know, understanding it and  
24 bringing it to what they do individually within the company.

25 Q Okay.

*Hayes - direct - Orsini*

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1 MR. ORSINI: Your Honor, I offer DX 6763 into  
2 evidence.

3 MR. HAMER: No objection, Your Honor.

4 THE COURT: All right. DX 6763 is received into  
5 evidence.

6 (Defendant's Exhibit 6763 so marked in evidence.)

7 Q Mr. Hayes, if you look at the page ending in 841.

8 A Yes.

9 Q There's a quote there attributed to Mr. Chenault. Do you  
10 agree with that?

11 A Yes, I do.

12 Q Why is that?

13 A Because I've experienced over the last 19 plus years  
14 the power of the American Express brand to be a contributor  
15 to our growth as a business.

16 Q And can you just describe briefly what you mean by  
17 that, how does the brand contribute to your growth as a  
18 business?

19 A Well, you know, because it's so clearly defined in the  
20 marketplace with this idea of trust, security and service and  
21 it has been so well defined and then delivered upon, it gives  
22 people an immediate expectation of what they can, what they  
23 will get from American Express.

24 So, when we launch a new product into the market,  
25 having a brand as well developed and as strong as American



*Hayes - direct - Orsini*

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1 Express gives us the ability to bring that product to  
2 market. If it was not branded at all and no one knew where  
3 it came from, they wouldn't come to that product with the  
4 expectation that they can trust it, that it would give them  
5 high levels of service, that it would be something that could  
6 provide some security for them.

7 So, the brand as an asset brings many things, many  
8 expectations to what it is you're doing. It allows us to  
9 attract new customers and, you know, it's a -- the brand is  
10 such an important asset because it really is a reflection of  
11 the relationships that we have with our customers.

12 Q And when you're using customers there, who are you  
13 talking about, what category of customers, is that the same  
14 group you talked about earlier?

15 A Yes.

16 Q And that includes whom?

17 A It includes cardmembers, the various cardmembers that we  
18 identified, whether it is consumers or small businesses or  
19 corporations, as well as, you know, the merchant groups.

20 Q Now, it is your view, Mr. Hayes, that American Express  
21 has strong loyalty with its customer groups; is that correct?

22 A Well, we work hard every day to develop loyalty. I think  
23 that the best way I can answer your question is to say that  
24 the way we go to market is to build relationships with our  
25 customers and I think the best evidence that I can give you,

*Hayes - direct - Orsini*

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1 it is anecdotal but to me it is compelling, is that whenever I  
2 meet people and I ask them if they're American Express  
3 Cardmembers, I'll follow that question with what's your member  
4 since date and I am always amazed at how well people know that  
5 date off the top of their head. They don't open their wallet  
6 and look at the card and say, oh, gosh. They tell me  
7 immediately, you know, 1981. And I ask them with all the  
8 passwords you have to remember and with everything else that  
9 you've got in your mind, how is it you remember that date,  
10 because functionally that date has no functionality in our  
11 processes, and these people respond to me, well, it was -- I  
12 remember when I got it, it was a moment, and I think that all  
13 of that is emblematic of the fact that American Express is a  
14 brand that has to build want in the marketplace.

15 Can I explain that a little bit?

16 Q Sure.

17 (Continued on next page.)  
18  
19  
20  
21  
22  
23  
24  
25

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. ORSINI:

3 Q Okay.

4 A American Express, we are in the business, you know, that  
5 I would argue that Visa and MasterCard are brands that are  
6 needed in people's lives. They -- they -- frequently, people  
7 frequently get those cards as an extension of another  
8 relationship, they maybe seek it out particularly, but it was  
9 part of a debit offering or a credit offering from the bank  
10 they do business with.

11 But with American Express you have to take  
12 deliberate step to get our products. And the only way, and  
13 quite frankly and somewhat unfortunately you can get through  
14 life very well without an American Express card.

15 For us, we have to build that want in the market,  
16 that desire. And so building relationships with people is a  
17 fundamental part of what we have to do in the market every  
18 day, because in order for us to do business, we have to create  
19 that want, that desire for our products.

20 And by building relationships, it allows us to  
21 deepen what we do with people, but also allows us to then  
22 build towards a level of loyalty.

23 Q So what does that level of loyalty and the fact that  
24 people know their membership, member since dates tell you  
25 about what you do or don't need to do to continue to maintain

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1 that relationship?

2 A Well, it tells me that we have a very deep relationship,  
3 but it's not something we can take for granted. It's not  
4 something that I believe will be there if we take it for  
5 granted.

6 I'll give you an example of something that happened  
7 very recently. I recently learned that the first year we put  
8 "member since" on the card was 1964. And the way I learned  
9 this was, because this year is 2014, it is the 50th  
10 anniversary of those card members.

11 And I have gotten a number of letters and e-mails  
12 from those customers that are celebrating their 50 years. And  
13 they are not pleased that it wasn't recognized. In fact many  
14 of those notes come to me and they say do 50 years not matter?  
15 I mean, what is going on here?

16 And you can tell two things from that. One, you can  
17 tell the depth of the relationship, and it's real. I mean,  
18 these people want to be recognized for how long they have been  
19 a card member. But you also get the sense that, you know  
20 what, the minute you take it for granted, you don't recognize  
21 it, they are not going to be there for you. Because the  
22 emotion in some of those notes was -- is quite telling.

23 Q What did you do in response to getting those notes?

24 A Well, I have created a kit that we will be sending out to  
25 every one of our card members when they reach their 50th

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1 anniversary. The kit includes a letter from Ken Chenault,  
2 includes a replacement card which will be their same plastic,  
3 so if they're a green card member, it will be a green card.

4 But the only difference on the card will be in the  
5 filigree there is a "50" that is very clear and easy to  
6 recognize, because we want these folks to be able to proudly  
7 demonstrate that they're 50-year card members with American  
8 Express.

9 Q And why did you think that was something that was  
10 important to do?

11 A Well, because, you know, if you think about the  
12 characterization of our service, respect and recognition is  
13 the way we characterize, the way we deliver service, the  
14 benefit of our service. And I felt it was very important  
15 based on these letters that these folks be recognized.

16 And by doing this, I think it recognizes who they  
17 are and demonstrates our respect for the fact that they have  
18 done business with us for 50 years.

19 Q Now, if we could take a look at slide 843, please. And  
20 this is entitled, "Keys to Building a Strong Brand." It lists  
21 three fundamentals. A clear brand promise, we've talked about  
22 that. Consistently implanted over time, I think we've talked  
23 about that as well. And then it references this concept of  
24 touch points again.

25 So in the context of American Express' business,

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1 what did you mean when you were presenting internally about  
2 touch points?

3 A Well, it meant, you know, all of the places, as I  
4 mentioned earlier, it is all of the places we touch our  
5 customers. I mean, this is where brand management gets  
6 complex, because you have to insure that you're consistently  
7 delivering whatever it is you promise across all of the touch  
8 points for that particular customer.

9 Q And so, for example, with respect to merchants, what are  
10 some of the touch points that you manage?

11 A Well, related to merchants --

12 Q With merchants as customers. Are there touch points with  
13 merchants as customers?

14 A Certainly. I mean, you know, if you think about some of  
15 those touch points, what we do from a fraud standpoint is one  
16 of those services that touches the merchant. There is many  
17 things that we do in terms of making offers, and what we've  
18 done with card synch that has allowed us to, you know, offer a  
19 service of bringing more customers.

20 But also in our service centers, you know, what we  
21 do, we measure every transaction that we have with recommend  
22 to a friend in terms of our merchants and our merchant  
23 services.

24 Q Can you describe what you mean by that, by measuring and  
25 recommending to a friend?

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1 A Yes. We try to keep measurements really simple, because  
2 we find that when you are operating in an enterprise as large  
3 as ours, it is important to have simple clear metrics that you  
4 can rely on just to measure different things.

5 In this case, it's satisfaction. And the question  
6 that we ask after a transaction with us, after a touch point  
7 with us, with one of our service people, will be would you  
8 recommend this brand to a friend. And understanding that, and  
9 understanding how well we perform after that touch point is  
10 important for us in understanding how well we are performing  
11 against the expectations for that customer.

12 Q What does American Express do to monitor the consistency  
13 of these merchant touch points that you've described?

14 A Oh, we put an enormous amount into, you know, this  
15 presentation is one of many things that we do inside the  
16 company to reinforce for every organization the importance of  
17 consistency at, whenever we are, in touching a customer,  
18 whether that be, you know, signing a merchant or, you know,  
19 servicing or offering value.

20 All of those touch points we look at, and we look to  
21 create consistency across all of it.

22 Q Now, shifting to card members as customers, does American  
23 Express undertake efforts to maintain the consistency of touch  
24 points with that set of customers?

25 A Oh, yes. I mean, it -- we -- we do an enormous number of

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1 things again to provide consistency, because again you've got  
2 separate business, separate business units, you know, people  
3 driving those businesses, and it is so important that when we  
4 get down to every one of the touch points that we manage it  
5 with such clarity and simplicity.

6 I will give you an example. If you could see the  
7 bank partners that we do business with. I'll just use that as  
8 an example.

9 Q These are, just so we're clear --

10 A I'm sorry, the GNS bank partners.

11 Q And they issue credit cards, they're on the American  
12 Express network, but also have their logo on it?

13 A That is correct. And if you look at what we do there,  
14 and, you know, we've created something, it's quite a large  
15 book called, we call it, the acronym is BOP, BOP meaning book  
16 of permissions.

17 And what we do is we have outlined in copious detail  
18 exactly how every touch point that that bank partner will have  
19 in touching consumers needs to be managed, because managing it  
20 consistently is the way we will build the brand.

21 Q Why does it matter -- why does it matter how American  
22 Express -- I am sorry -- how the bank partners interact with  
23 their own card members?

24 A Well, I was just going back to this -- this point here.  
25 It says "across all touch points." Our business is quite



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1 complex, and we have to manage very effectively across  
2 multiple touch points, multiple customer segments, and we have  
3 to manage that with great consistency, because confusion is  
4 the enemy of great branding, as is inconsistency.

5 Q And what are the other places where American Express has  
6 touch points with its card members?

7 A Well, our service delivery units, if you look at what we  
8 do in terms of the service that we offer, we have touch points  
9 where, you know, our customers are calling us and they are  
10 looking for us to solve problems for them.

11 And those touch points are critical and again we  
12 measure the transactions, we measure the value with recommend  
13 to a friend, measurements to see how well we are performing  
14 there.

15 Q Now, over the years you have been involved in discussions  
16 around potential co-branded partnerships within American  
17 Express?

18 A Yes.

19 Q And what is your role in those discussions?

20 A The role I play and my team plays is to look at the  
21 compatibility of the brands that we are looking to do a  
22 co-brand with and to determine whether or not that is going to  
23 add value to our brand and add value obviously to the  
24 co-branded partners' brands, and to understand whether or not  
25 that is going to add to the value of American Express in the

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1 marketplace, because what we are doing is consistent with the  
2 things we stand for.

3 Q And why does it matter whether or not American Express  
4 brand is compatible with the brands that you are considering  
5 partnering with?

6 A Because people will judge and understand or not  
7 understand the American Express brand based on the brands we  
8 put it next to. The brands we create partnerships with. And  
9 so it is very important, as I mentioned earlier, for  
10 simplicity and clarity, for it to be easy and simple to  
11 understand why is American Express doing business and  
12 co-branding with that other brand.

13 I mentioned before with Bluebird, you know, Walmart  
14 and American Express really is a very cohesive and very  
15 powerful combination of brands that we can bring to the  
16 marketplace for something like a full service prepaid account.

17 Q And does American Express also sometimes partner with,  
18 not the co-brand cards, but with organizations, you mentioned  
19 USTA earlier. Are there other organizations that American  
20 Express aligns itself with?

21 A Oh, yeah, there's many organizations that we align  
22 ourselves with. And we do the same approach with the  
23 organizations that we are aligning ourselves with, whether  
24 it's USTA, USGA.

25 When we look at organizations that we are going to

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1 do a sponsorship with or get involved with in any way, we look  
2 at whether or not that particular sponsorship or that entity  
3 will live up to our values, live up to the integrity that  
4 brings about the trust and security for American Express. So  
5 who we align with is very important in terms of delivering on  
6 those values and those attributes in the marketplace.

7 Q And have you been involved in discussion about  
8 essentially GNS partnerships and how that relates to American  
9 Express?

10 A Yes.

11 Q And what was your role in those discussions?

12 A Well, I guess the greatest outcome of my role would have  
13 been the BOP, the book of permissions, to understand, you  
14 know, how we will manage that new product offering in the  
15 marketplace, and how the experience will be managed. But we  
16 also spent, you know, I spent time understanding each of these  
17 entities, particularly in the early days with my team and I  
18 spent time understanding the banks that we were going to be  
19 doing business with, and understanding, you know, how they  
20 served customers et cetera.

21 Q And was one of those you were involved with discussions  
22 with MBNA?

23 A Yes.

24 Q Take a look in your binder at Defendant's Exhibit 2003.  
25 And what is this document?

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1 A This was a presentation that we did getting into the --  
2 this is the very beginning of the relationship with MBNA. Do  
3 you want me to explain who they are?

4 Q No -- sure.

5 A Because MBNA no longer exists as a standalone entity.  
6 They were purchased by Bank of America. And they were a bank  
7 that really specialized in doing affinity cards, like a  
8 university card for people who were alumni of that university.

9 MR. ORSINI: Your Honor, we offer DX 2003 into  
10 evidence.

11 MR. GLASS: Your Honor, no objection.

12 THE COURT: All right. DX 2003 is received in  
13 evidence.

14 (So marked Defendant's Exhibit 2003 in evidence.)

15 Q Take a look at slide 7 which ends in Bates number 3510.

16 A Yes.

17 Q The American Express brand promise. What was the purpose  
18 of presenting this slide to MBNA?

19 A The purpose was to help them fully understand what we  
20 needed to deliver in order for anything we do in the  
21 marketplace to live up to being branded American Express. So  
22 we started with what was in the middle there with making  
23 customers feel respected and special through unsurpassed  
24 service, expertise and integrity. I look at those as another  
25 way of talking about the attributes of the American Express

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1 brand?

2 Q And did American Express ultimately partner with MBNA?

3 A Yes, we did.

4 Q And today Bank of America?

5 A That's correct.

6 Q You can put that document aside.

7 You mentioned earlier, Mr. Hayes, that GMPI is one  
8 of the groups that reports to you. Is one of the things that  
9 they study the affinity that your card members have to the  
10 American Express brand?

11 A Yes. You know, one of the things that I mentioned  
12 earlier was anecdotal about the member since date. But we are  
13 in market, for example, with the brand Health Tracker, where  
14 we are in markets basically every day serving the customer  
15 base and prospects, to understand how they view the American  
16 Express brand.

17 And the reason -- and we roll that up monthly and  
18 view the results monthly. And the reason we do it as a  
19 tracker is because we want to understand any changes in the  
20 marketplace related to the brand and how the brand is being  
21 perceived by these different segments.

22 Q When you say you are in market every day and then you  
23 roll it up; what does that mean?

24 A It means that we're -- when you do a tracking study, you  
25 are in market asking the questions all of the time, every day.

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1 We probably don't do it on Saturdays and Sundays, but we are  
2 out there every week asking the audience that we survey  
3 questions about American Express.

4 And then we take the results of that, we don't look  
5 at the results every day because it's is too frequent to look  
6 at the results, but it's not too frequent to gather the  
7 result.

8 So what we do is we roll them up on a monthly basis,  
9 and then once a month we look at what are the fundamental  
10 changes, are there things shifting, are there, you know,  
11 changes that we see in the brand overall.

12 Q If you could take a look in your binder at Defense  
13 Exhibit 7617. The cover is an e-mail from Adam Rothschild to  
14 RSS, that's Bobby Schreiber, and you are copied on this. Who  
15 is Adam Rothschild?

16 A Adam heads up the global marketplace insights group,  
17 GMPI.

18 Q If you look at the next page, you see there is a Deck  
19 that was prepared, a presentation, entitled "Global Brand  
20 Overview."

21 Do you see that?

22 A Yes, I do.

23 Q And this a type of document that GMPI creates?

24 A Yes. Yes.

25 MR. ORSINI: Your Honor, I offer DX 7617.

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1 MR. GLASS: No objection, Your Honor.

2 THE COURT: All right. DX 7617 is received in  
3 evidence.

4 (So marked Defendants' Exhibit 7617 is admitted.)

5 Q Take a look at slide 7, which is Bates ending 763.

6 A Yes.

7 Q This document is actually confidential.

8 This is a slide that is entitled "Key Driver  
9 Analysis, American Express Brand Tracker."

10 A Yes.

11 Q And brand tracker, is this the study you were referring  
12 to a minute ago?

13 A Yes, it is.

14 Q And then if you go to the first column down on the left,  
15 there are a series of rows. Are these the key drivers that  
16 were at least at that time being measured as part of the brand  
17 tracker?

18 A Yes, that is correct.

19 Q And the first one under "Unaided brand awareness is for  
20 someone like me." Why is that a key driver that you studied?

21 A For someone like me is fundamental, because when you are  
22 talking to both customers and prospects, if they don't view  
23 that your brand is for them, it is unlikely you are going to  
24 either keep them as a customer or get them as a customer.

25 And so insuring that people feel that the brand is

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1 for them is a very important part of effectively managing the  
2 brand over time.

3 Q If you go down to the bottom one, right above "Likely to  
4 recommend," key driver that is listed there is "Feel good  
5 using it." Is that also a key driver that the brand tracker  
6 measures?

7 A Yes, it is.

8 Q Why is that one of the key drivers that you are  
9 measuring?

10 A Well, because it reflects one of the most important touch  
11 points that we have. I mean, we are in the payments business,  
12 and our cards are payment cards. And so how a customer feels  
13 using that card is an important part of the delivery of the  
14 brand. And so it is very important information for that to be  
15 measured and understood.

16 Q You said it reflects one of the most important touch  
17 points. What is the important touch point you are referring  
18 to?

19 A When a customer will use their card. So when they pay  
20 for something. When they go to pay for something and use the  
21 American Express card, that experience is a very important  
22 part of how they view the totality of the American Express  
23 brand.

24 MR. ORSINI: One moment, Your Honor.

25 Q If you can take a look at slide 9, please. Do you have



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1 that in front of you?

2 A Yes, I do.

3 Q And this slide is talking about coverage as it relates to  
4 brand help among both card members and prospects. Why is  
5 coverage something that is measured as far as brand help  
6 trackers?

7 A Well, because coverage directly affects that the  
8 experience of how I feel using the card. You know if there is  
9 a problem or a merchant doesn't accept American Express,  
10 that's not a good thing for the brand, so we need to  
11 understand what our coverage is.

12 Q Why do you measure coverage or perceptions of coverage as  
13 it relates to prospects?

14 A Well, because we want prospects to become customers. So  
15 we look at prospects because we see them as our potential  
16 future customers. And we know that both coverage and the  
17 perception of coverage are important measures related to  
18 whether or not somebody wants to become an American Express  
19 card member.

20 Remember, I go back to the fundamentals of what we  
21 are trying to do with American Express. We are not in the  
22 need business. You don't need an American Express card. We  
23 have to get you to a place where you want an American Express  
24 card. That's why someone like me, I want this.

25 And it also goes to perceptions of coverage and

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1 coverage. You know, is this going to work for me. Do I want  
2 this product. So that's just what underneath all of these  
3 measures as we look at them.

4 Q I would like to show you a different document, if you  
5 could look at Defendant's Exhibit 6309. The cover of this is  
6 "Consumer Services Market Voice Executive Report." What is  
7 Market Voice?

8 A Market Voice is similar to the brand Health Tracker in  
9 the sense that it is another tracking study that we do in the  
10 marketplace, and we roll it up once a month as well. So it's,  
11 from that standpoint, very similar. But the focus of Market  
12 Voice is on our products as opposed to just on our brand.

13 Q And what sort of products are being measured as part of  
14 the Market Voice study?

15 A Well, in this particular case we were measuring the  
16 consumer products, and the consumer cards that we have in the  
17 market.

18 Q This is not a study conducted by GMPI?

19 A Yes, it is.

20 MR. ORSINI: Your Honor, I offer DX 6309 as  
21 evidence.

22 MR. GLASS: No objection.

23 THE COURT: All right. DX 6309 is received in  
24 evidence.

25 (So marked Defendants' Exhibit 6309 in evidence.)

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1 Q And if you look at page ending 288.

2 A I don't have 288. 822, maybe?

3 MR. ORSINI: I'm sorry. One second.

4 THE COURT: 6309. 822, it's a possibility.

5 MR. ORSINI: Sorry, I actually meant 825. I am  
6 sorry.

7 A Okay.

8 Q And the title of this slide is "Touch Points and Image  
9 Attributes, Consumer Services Overall." And what is this used  
10 for within American Express' business?

11 A Well, it is used for a few things, but most importantly  
12 it tells us how well we are doing in the marketplace related  
13 to the touch points, and how effectively we are delivering on  
14 that, those touch points, and how it is ultimately affecting  
15 the view of the American Express brand.

16 Q Now, these Market Voice-type surveys, are they used only  
17 by your group or are they used by other groups within American  
18 Express?

19 A No, they are used by the business units within American  
20 Express. And while my group will field the study for the  
21 business units, the business units themselves are using this  
22 data to make decision about what they need to do.

23 Q So this one we said was focused on consumer cards. Does  
24 that mean the business unit would be Josh Silverman's business  
25 unit?

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1 A That's correct.

2 Q If you'd take a look at a different document, which is  
3 Defendant's Exhibit 3974. Do you have that?

4 A I do.

5 Q This is another study done out of GMPI?

6 A Yes, it is.

7 Q Is this one conducted regularly?

8 A It is different than the Brand Health Tracker and Market  
9 Voice. It is not a continuous tracker. So on a periodic  
10 basis we go in and field this research. We don't do the  
11 research on a steady monthly basis.

12 Q So you are distinguishing this from the one that's run  
13 every day and rolled up monthly. It's one that is done  
14 periodically over time?

15 A That's right.

16 MR. ORSINI: Your Honor, I offer 3974.

17 MR. GLASS: No objection, Your Honor.

18 THE COURT: All right. Defendant's Exhibit 3974 is  
19 received in evidence.

20 (So marked Defendant's Exhibit 3974 in evidence.)

21 Q Now, this one I would like you to look at page 288,  
22 please.

23 THE COURT: How do they get this information? Do  
24 they call people?

25 THE WITNESS: We have, we use outside research firms

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1 and they specialize in touching base with people. It could be  
2 a phone call, it could be a mail survey, it could be on line,  
3 Internet. There is a variety of way that we reach people to  
4 ask these questions.

5 THE COURT: So target population that they want to  
6 measure, the views of which they want to measure, that is  
7 where they go in order to provide you with the data for these  
8 reports?

9 THE WITNESS: That is exactly right.

10 THE COURT: And GMPI is an outside vendor; in other  
11 words, you employ them, or they work for you?

12 THE WITNESS: GMPI is an internal group. They are  
13 actually in my organization.

14 THE COURT: Oh, they are.

15 THE WITNESS: What they will do is they will farm  
16 out to those outside research vendors the specs. In other  
17 words, who we want to talk to, what are the questions that we  
18 want answered, et cetera. They'll put that together and field  
19 it in the marketplace and bring it back to us.

20 They bring it back to GMPI first because those are  
21 the people specialize in knowing if something is not done  
22 right or if there's a misleading result to make sure that  
23 we've got credibility in the results. And then the GMPI  
24 organization will bring it back to the business unit on whose  
25 behalf they were fielding this.

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1 THE COURT: So in effect, they validate it and then  
2 they pass it along.

3 THE WITNESS: That's correct. And they'll summarize  
4 it at times, too, and hopefully bring some insights to the  
5 work, which is why we call them marketplace insights as a  
6 group.

7 THE COURT: Thank you.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. ORSINI:

10 Q If you look at the first page of this presentation, page  
11 270, there's a reference to a research group, National Analyst  
12 Worldwide. What are they?

13 A That would be an outside vendor that was used to field  
14 this study.

15 Q So if you can go back to 288, please. There's reference  
16 here to two coverage metrics. There's perception of coverage,  
17 which we've talked about quite a bit so we won't go into that.  
18 And then there's SWC. What does SWC mean?

19 A Satisfaction with Coverage.

20 Q What's the difference between Perception of Coverage and  
21 Satisfaction with Coverage.

22 A Let me explain, actually, all three. The first is  
23 coverage, right. So we measure what the coverage is. And  
24 then we look at what are the perceptions of coverage among  
25 both customers and prospects to understand if there's a

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1 difference between the reality of coverage and the perception  
2 that people might have of where our cards are accepted.

3 And then we also look at what is the satisfaction.  
4 And the satisfaction is, really, the -- is focused, first of  
5 all, on our cardmember base. It's looking at, using a scale  
6 of one to ten, how would you describe your satisfaction with  
7 the level of coverage that we have.

8 Q So beneath there's a yellow box that's labeled  
9 Influencers, and then there are five influences beneath it.  
10 So you talked about actual coverage. What's usage experience,  
11 is that just what it sounds like?

12 A It sure it. This is probably -- if we drew these boxes  
13 in terms of their importance or what we believe to be their  
14 impact, usage experiences would be very large because it's  
15 what's influencing these folks based on what they see and what  
16 happens in terms of the usage of the card at Point of Sale.

17 Q What are visual cues?

18 A Visual cues are things like decals at Point of Sale,  
19 signage, things that clearly recognize that American Express  
20 cards are accepted at a particular merchant.

21 Q I think we talked about card affinity and relationship.  
22 What's Communications and Info?

23 A It's whatever might be put in the marketplace to  
24 reinforce either what the coverage is, how easy it is to use  
25 the card, things along those lines.

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1 Q Okay. You can put that document aside.

2 Now, Mr. Hayes, you're familiar with the  
3 non-discrimination provision that are the focus of this  
4 lawsuit, correct?

5 A I am.

6 Q From your perspective, what is the importance of the  
7 nondiscrimination provisions to the American Express business?

8 A Well, they're designed to manage that experience at Point  
9 of Sale that our customers will have when they go to use an  
10 American Express card.

11 Q Why do you believe that that's important?

12 A I think it's fundamental. Because the -- we talked about  
13 touch points before. The touch point of usage of a card is,  
14 frankly, one of the most important touch points that we have  
15 with customers. One, because the card is a payment device,  
16 and also because of the frequency by which our customers are  
17 in that situation of making use of the card at Point of Sale.

18 Q If American Express wasn't able to have the  
19 nondiscrimination provisions and deliver that consistent  
20 experience what do you think the impact would be on its  
21 business?

22 A Oh, I think it would be very negative. A very negative  
23 impact on it because it would have negative impact on the  
24 brand. You know, maybe I look at the world through one lens,  
25 which is the brand lens. But, you know, this brand is who it



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1 is today because of the experience.

2 When you talk to our cardmembers and you talk to  
3 them about what they believe in in American Express, they'll  
4 go back to their experiences. And their experiences are  
5 varied, some of them are services experiences. But the  
6 purchase experience, the experience at Point of Sale is  
7 critical to how they think about this brand.

8 The nondiscrimination provisions are designed to, no  
9 different than the BOP with the bank partners, it is designed  
10 to clearly state this is the experience we need to have our  
11 cardmembers have with us.

12 Q So --

13 A We need our cardmembers to have. That's what I was  
14 trying to say.

15 Q You were involved back in the 90's in American Express'  
16 business reactions to the We Prefer Visa campaign, correct?

17 A Yes, I was.

18 Q What do you recall about the We Prefer campaign?

19 A It had -- what I remembered most was it scared me. It  
20 was a -- it was a very impactful [sic] effort they were doing.

21 Q Why was it something that scared you?

22 A Because it had -- it had an impact on our cardmembers and  
23 their perceptions.

24 Q If you can take a look in your binder at Defendant's  
25 Exhibit 7525.

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1 MR. ORSINI: Your Honor, this document is in  
2 evidence.

3 Q Do you recall that there was an impact study done in 1997  
4 on the We Prefer campaign?

5 A I do. I mean, my memories of this are probably  
6 commensurate with the time that has elapsed since. I remember  
7 some things about it, yes.

8 Q You're familiar with the term "welcome acceptance"?

9 A Yes, I am.

10 Q What does that term mean?

11 A It is what our merchants provide at that point in the  
12 service chain, which is, we want the card to be welcome when  
13 an American Express cardmember presents their card for  
14 payment.

15 Q If you look at the second page of this memo.

16 A Yes.

17 Q Towards the top right, under Reaction to General Payment  
18 Preferences Messages. There's a statement that says, "Well,  
19 being exposed to a payment preference message does not make  
20 cardmembers and non-cardmembers feel unwelcome. It does make  
21 them feel that the establishment does not understand their  
22 needs and is not making it convenient for them to make  
23 purchases."

24 So can you explain -- you said welcome acceptance is  
25 important. And this is saying that message did not make

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1 cardmembers and non-cardmembers feel unwelcome. Can you  
2 explain how those two are consistent?

3 A Yes. I think you have to take the entire statement into  
4 account here. What this summary states is that being exposed  
5 to the payment preference message does not make cardmembers  
6 feel unwelcome. It does make them feel the establishment does  
7 not understand their needs and is not making it convenient for  
8 them to make purchases.

9 So, you know, that, to me, doesn't sound like  
10 welcome acceptance. That doesn't sound like the experience  
11 that these cardmembers are having is one in which they are  
12 feeling welcome as it relates to the payment device that  
13 they're using.

14 Q So when you use the term "welcome acceptance," are you  
15 referring to -- what specifically are you referring to,  
16 welcome to do what?

17 A Welcome to pay with the card that they've chosen, okay.

18 Q If you can look further down, at the bottom of that page  
19 there is a bullet point that the Court has seen before about  
20 "Nearly 60 percent of cardmembers believe that these  
21 preference messages raise doubts in their minds as to whether  
22 American Express is accepted."

23 A Yes.

24 Q You generally recall that that was the result of the  
25 survey work that was done back then?

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1 A Yes, that's correct.

2 Q What was your reaction to seeing that?

3 A One of concern. That is really where my concern is  
4 coming from because it said that 60 percent of these believe  
5 that these preference messages raise doubts in their mind on  
6 whether Amex is accepted. We go back to the issues of  
7 coverage and, you know, whether or not this product will be  
8 useful for that particular cardmember.

9 And when you look at everything we do to manage  
10 consistently every touch point for our customers, to have this  
11 be the outcome, doubting whether or not they can use it, is  
12 very concerning.

13 Q Now, back in the mid 1990's, American Express' actual  
14 coverage figures are lower than they are today, correct?

15 A Yes, they were.

16 Q Fairly significant lower, right?

17 A I'm not familiar with the exact numbers during that  
18 period. But I do know that we grew coverage. I can't put an  
19 adjective on it, but we definitely grew coverage.

20 Q And since the 1990's, American Express has changed or  
21 increased the way that it provides value to its cardmembers?

22 A Yes.

23 Q Given those changes in coverage level and changes in the  
24 benefits provided to cardmembers, do you believe if the We  
25 Prefer campaigns were to start today you would see a

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1 significant difference in terms of the reaction of  
2 cardmembers?

3 A I don't. I don't believe that we would see a measurable  
4 difference. I would say because there still are coverage gaps  
5 that we have. So even though we've improved coverage, we  
6 haven't made the gaps go to zero by a long shot. And I also  
7 know that, you know, our cardmembers still -- the idea of  
8 raising doubt is as relevant today as to what I am saying.

9 Q Put that one aside. If you can look at Defendant's  
10 Exhibit 7492.

11 MR. ORSINI: Your Honor, this document is already in  
12 evidence as well.

13 Q Now, the Court's seen this memo a number of times,  
14 Mr. Hayes. This is one that you coauthored with Mr. House and  
15 Mr. Schick. At the time, you were the chief marketing  
16 officer, correct?

17 A Well, my title at the time was executive vice president  
18 of global advertising. But I was still doing these functions,  
19 yes.

20 Q Okay. Thank you.

21 David House was the head of establishment services  
22 at that time?

23 A As I recall, yes.

24 Q And what was Mr. Schick's role?

25 A He was head of CA&C, which is Consumer Affairs and

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1 Communications, I think.

2 Q Mr. Chenault and Mr. Golub were the two most senior  
3 executives of the company, is that right?

4 A Yes, that is correct.

5 Q Was it typical to have a memo go to them that was  
6 authored by three individual?

7 A No, it was not.

8 Q Why was this one done by all three together.

9 A Well, I mean, again, it's a long time ago. So I'll give  
10 you what I can recall. But you know, this subject was one  
11 that was very important to us and had the attention of a  
12 number of senior people in the company.

13 Q Do you recall there being debates on how to respond to  
14 this, "this" being the We Prefer campaign?

15 A Yes.

16 Q If you look down at the bottom bullet, it says, "These  
17 developments are not only damaging in the short-term but could  
18 lead to a disciplined concentrated attempt by Visa to surround  
19 us with a Visa preferred world. In one scenario they could  
20 drop the "and they don't take American Express" tag line,  
21 which has lost its potency in the face of our vastly expanded  
22 coverage and substitute Visa preference as their signature."

23 What did that bullet point mean when you were  
24 coauthoring this memo?

25 A Well, it was referencing the size and scope of Visa and

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1 the impact and the scope of what they could do with Visa's  
2 preferred campaign. As I recall, up 'til that point it had  
3 not been rolled out broadly and we were concerned that this  
4 could begin to show up everywhere.

5 Q Now, if you look at the next page, Action Steps on the  
6 top. The first bullet point says, "A response should not  
7 involve market merchant preference campaigns of our own." And  
8 then you provide two reasons. The first is "cannot afford to  
9 go head-to-head in a bidding war with Visa in a multiplicity  
10 of markets?"

11 Why did you believe you couldn't go head-to-head  
12 with Visa?

13 A Well, again, because of the size of Visa. We weren't  
14 going to outgun them on a program like this. And so to go  
15 toe-to-toe we felt was just not a strategy that was going to  
16 work because we were dwarfed by them.

17 Q And the second piece of this bullet point talks about  
18 "not abandoning the moral high ground."

19 What were you referring to there?

20 A Well, the moral high ground really had to do with how we  
21 were building this brand. You know, we -- again, I go back to  
22 building a brand around the idea of want and not need, and  
23 recognizing that everyone didn't need an American Express. It  
24 was our feeling, my feeling, that we needed to stay on a  
25 positive note. We need to stay positive like the same way we

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1 built this brand and not get into a very negative campaign  
2 that I did not believe would help the issue, but we should  
3 maintain the moral high ground and the way that we built this  
4 brand right from the beginning.

5 Q Now, attached to this memo there is some mock-ups of  
6 potential ad campaigns around Australians preferring American  
7 Express.

8 Do you see that?

9 A Yes, I do.

10 Q Was that something that was done, to your knowledge?

11 A Yes. I mean, as I recall, it was -- it was something --  
12 I honestly don't recall this strongly like it was yesterday.  
13 But I do recall that there was work developed to see what we  
14 might do in trying a number of different approaches.

15 Q So if you're referring in the memo to not engaging in a  
16 preference war, how does that correlate to these potential  
17 acts?

18 A The idea behind this was, you know, what if we take the  
19 idea of preferred and switch it from the merchant preferring  
20 to what the cardmember prefers because it's their choice.

21 Q In the next bullet point, to go back to the memo, you  
22 say, "We should act aggressively but take the preferred  
23 designation and position, indeed, the word itself away, from  
24 Visa and, at a minimum, render it meaningless."

25 Now, were you referring to contract provision in



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1 this bullet point?

2 A No.

3 Q You're not referring to the NDPs?

4 A No.

5 Q What were you referring to?

6 A We were referring to things like you're looking at in  
7 these ads which make use of the word "preference" or  
8 "preferred". And to see whether or not it would hold value to  
9 have the word "prefer" appear in other context to see whether  
10 or not that might be a competitive response.

11 Q Now, take a look at, in your binder, a different  
12 document, which is Plaintiff's Exhibit 1107. There's actually  
13 a series of memos built within this one exhibit. It looks  
14 like the first and second page and the final two pages of the  
15 same memo is two copies of it, but there's a different one in  
16 the middle.

17 Do you see that?

18 A Yes.

19 Q Let's start with the one that's on the cover. This is a  
20 memo from Harvey Golub to you, Ken, you, Tom Schick, and David  
21 House.

22 Do you recall, generally, having discussions with  
23 Mr. Golub around the idea of engaging in We Prefer campaigns  
24 to American Express's own with merchants?

25 A Yes, I do.

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1 Q Do you recall what your view was as to whether or not  
2 that would be the right move to take?

3 A I was against -- as I said earlier, I was against taking  
4 a frontal approach to this because I just felt it was not  
5 going to be effective because we could not man the same, you  
6 know, intensity and size and scope of campaign up against a  
7 player like Visa.

8 So it was my view that we needed to do something.  
9 But to do something that was a knee jerk and go back at it  
10 with the same word was not, in my mind, the best alternative  
11 at that time.

12 Q Do you know whether or not American Express took that  
13 alternative, as proposed here?

14 A To the best of my knowledge, we did not.

15 Q Now, in the intervening time, since the late 90's through  
16 today, have you personally ever sought to have a merchant  
17 state in those words a preference for American Express?

18 A No.

19 Q And why not?

20 A Well, because my philosophy -- and frankly, the  
21 philosophy of a few of us at the time, a number of us at the  
22 time, was that we would rather get behind the idea of choice  
23 and letting the customers choose because we felt that that was  
24 the right way to approach things. So that has been and was,  
25 that was the way we focused at that time and it's the way we

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1 focus today. It certainly reflects my philosophy.

2 Q I want to look at one more document, Mr. Hayes.

3 Defendant's Exhibit -- actually, I don't think I moved that  
4 into evidence.

5 MR. ORSINI: Your Honor, I offer PX 1107 into  
6 evidence.

7 MR. GLASS: No objection.

8 THE COURT: PX 1107 is received.

9 (So marked as Defendant's PX 1107 in evidence.)

10 Q Mr. Hayes, can you take a look at Defendant's 7595.  
11 There is handwriting on the front of this. Is that yours?

12 A It looks like it.

13 Q As of 1998, establishment services group, is that the  
14 merchant group in the United States?

15 A Yes.

16 Q And this is relevant to the We Prefer Visa campaign,  
17 correct?

18 A To my recollection, yes.

19 MR. ORSINI: Your Honor, I offer DX 7595.

20 MR. GLASS: No objection.

21 THE COURT: DX 7595 is received in evidence.

22 (So marked as Defendant's DX 7595 in evidence.)

23 Q There's a reference in the first two bullet points to an  
24 Everywhere You Want To Be campaign. And in the next bullet  
25 point you talk about the We Prefer campaign.

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1 Do you see that?

2 A Yes, I do.

3 Q In your mind, at the time, what was the relationship  
4 between those two campaigns?

5 A Well, as I recall, the Visa preference, as we just  
6 discussed, was something that was -- that had come about. It  
7 was mostly centered in terms of where it was present in the  
8 Point of Sale and in merchant locations and whatnot. Because  
9 on television, when they first -- when Visa first started  
10 doing the Visa preference campaign on television, they were  
11 still doing the "and they don't take American Express"  
12 advertising.

13 According to this, I know Visa moved from "they  
14 don't take American Express" to "everywhere you want to be" as  
15 their theme of their television and broad mass communications.  
16 So I expect what this is referring to is that they're working  
17 with both "everywhere you want to be" and the Visa preference  
18 world.

19 Q Now, if you take a look at page 6, there's a reference to  
20 the first bullet point to the Visa War Chest. And then the  
21 second bullet point talks about what American Express could or  
22 could not do in the long run. I take it, based on your  
23 testimony earlier, this was your view at that time?

24 A Oh, yeah. I mean -- and I can't say this strong enough.  
25 It was definitely my view at the time. I mean, you know, Visa

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1 was taking on programs like the Olympics sponsorship and  
2 whatnot, things that we weren't about to afford to continue  
3 on. We felt that the -- you know, they were going to continue  
4 to invest in this program because of the results that we saw.  
5 We expected that would continue.

6 Q Now, Mr. Hayes -- and you can put that document aside --  
7 in your view, having lived through the experience, what do you  
8 think the impact on American Express' business would have been  
9 had the We Prefer campaigns continued unabated?

10 A My view is it would have had a very, very strong impact  
11 on our business. And the reason I say that is we go back to  
12 what we saw from a research standpoint. This was having an  
13 impact on our cardmembers. And my belief is that, the way I  
14 think about our business and our business model and the way it  
15 works, is that our merchants are an extension of us. They are  
16 playing a role that is very important in one of these touch  
17 points, that is, to provide a positive customer experience.

18 And you know, when I saw this, it was clear to me  
19 that if this was going to continue, we weren't going to get  
20 the positive experience that we needed at the Point of Sale.  
21 And what my view is, if they had continued on, we would have  
22 seen declines in the strength of our brand. And the impact  
23 would have been, I think, significant. Certainly creating  
24 some downward spiral of some sort over time.

25 (Matter continued on the next page.)

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1 DIRECT EXAMINATION (CONTINUED)

2 Q Now, you mentioned earlier a couple ways in which  
3 American Express has reinvented itself over the years, the  
4 freight forwarding, the travelers checks, the credit cards.

5 Why, in your view, would the continuation of  
6 preference campaigns lead to a downward spiral as opposed to  
7 an opportunity for American Express to again reinvent its  
8 brand and its business?

9 A Well, because the decline that I was looking at in terms  
10 of some of those numbers from a perception standpoint, and we  
11 tend to think in most cases that changes in perception will  
12 lead to changes in behavior. And the view, our view was  
13 that -- can you repeat the question? I'm sorry.

14 Q Yes, the question was, we talked earlier --

15 THE COURT: I'm glad you asked. We're going to  
16 re-ask the question. Ask that question again.

17 MR. ORSINI: Thank you, Your Honor.

18 Q You spoke earlier about the various ways in which  
19 American Express's business has evolved over the years,  
20 correct?

21 A Yes, yes.

22 Q It was a freight forwarding business, then it went to  
23 travelers checks and then credit cards, do you recall that?

24 A I do. I do.

25 Q I just asked you what you thought the impact would be on

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1 the American Express business if the we prefer campaign had  
2 continued. Do you recall discussing that?

3 A I do.

4 Q And you said that you thought it would have a very  
5 negative impact on the business and lead to, the term you used  
6 was a downward spiral. Do you recall that?

7 A I do.

8 Q So my question was, essentially, American Express has  
9 reinvented itself all of these times over its history. Why is  
10 it your belief, as the chief marketing officer, that it  
11 couldn't just do that again?

12 A Well, because if you go back and look at the reinventions  
13 of this company, there's a couple things that have always been  
14 true. The things that have remained intact are trust,  
15 security and service, and that's the first point.

16 The second point is the existing business was not in  
17 a downward spiral. We were not replacing a business that was  
18 in a lot of trouble. It was just an evolution of our  
19 business. And these, these reinventions didn't happen in a  
20 year or even five years or even a decade.

21 Think about the latest reinvention, from travelers  
22 checks to cards. It's been 56 years. And travelers checks  
23 are still here. We didn't see that business in such a way in  
24 1958, where we said, we got to replace this business, what are  
25 we going to do? An enterprise is not -- cannot be that

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1 nimble. It has to take time to develop new businesses.

2 So the question really is would the Visa preference  
3 campaign have given us the kind of time that we've had in the  
4 past to reinvent, to build a new business. My guess is no.  
5 And so that's why I don't think it's just another reinvention  
6 of the American Express business.

7 Secondly, what we were seeing in what was happening  
8 with the research was some declines in some of those  
9 trust/security/service measures, because they were expecting  
10 that this point of sale was not -- this TouchPoint wasn't  
11 working as well.

12 When we reinvented this company in previous times,  
13 we were not dealing with situations that were negatively  
14 impacting our measures or our positioning of trust, security  
15 and service.

16 So for those reasons, I don't think -- I certainly  
17 wasn't sitting here thinking this is going to be another  
18 reinvention of American Express. I saw this as being  
19 something very different.

20 MR. ORSINI: I have no further questions, Your  
21 Honor.

22 THE COURT: All right. We're at about 6:00 and so  
23 we're going to recess for the evening. Please come back at  
24 9:00 tomorrow morning for cross-examination. Please do not  
25 discuss your testimony with anyone. And what's the projected



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1 length of your cross-examination?

2 MR. GLASS: I hope to get it done in 30 minutes or  
3 an hour.

4 THE COURT: I'm sorry. Say that again.

5 MR. GLASS: 30 minutes to an hour.

6 THE COURT: Okay, all right. Anything else for  
7 tonight from the government? The defense?

8 MR. CONRATH: No, Your Honor.

9 MR. CHESLER: No, Your Honor.

10 MR. HAMER: There is one item, Your Honor. We  
11 neglected to offer PX 0142 into evidence with the previous  
12 witness. We would like to do that now, if we can. This was  
13 the Walgreens e-mail from Ronald Schultz.

14 MR. Orsini: No objection.

15 THE COURT: Plaintiff 0142.

16 MR. ORSINI: Without objection, Your Honor.

17 THE COURT: Is admitted into evidence without  
18 objection.

19 (Plaintiff Exhibit 0142 received in evidence.)

20 THE COURT: See you tomorrow morning at 9:00. Thank  
21 you, everybody.

22 (Whereupon, the proceedings were adjourned at 5:57  
23 p.m. until August 5, 2014 at 9:00 a.m.)  
24  
25

I N D E X

WITNESS

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DIRECT EXAMINATION 4675

BY MR. ORSINI

CROSS EXAMINATION 4796

BY MR. HAMER

CROSS-EXAMINATION (CONTINUED) 4830

BY MR. HAMER

REDIRECT EXAMINATION 4893

BY MR. ORSINI:

RECROSS-EXAMINATION 4908

BY MR. HAMER

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DIRECT EXAMINATION 4912

BY MR. ORSINI

CONTINUED DIRECT EXAMINATION 4959

BY MR. ORSINI

EXHIBIT

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Plaintiff Exhibit 0853 4709

Defendant Exhibit 6791 4719

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